

77 Am. Jur. 2d Veterans and Veterans Laws Summary

American Jurisprudence, Second Edition | May 2021 Update

Veterans and Veterans' Laws

Karl Oakes, J.D.

[Correlation Table](#)

Summary

Scope:

This article discusses matters relating to veterans and veterans' laws, including discussions of veterans generally, the Department of Veterans Affairs, the eligibility of veterans and others for benefits under applicable laws, the payment of benefits, and provisions specifically applicable to minors and incompetents under veterans' laws. Other matters dealt with include particular types of benefits and assistance, such as hospital, nursing home, and domiciliary care and medical treatment; employment and reemployment rights; educational assistance; and other particular benefits and preferences available to veterans and other eligible persons. Veterans organizations are also discussed briefly in this article. Finally, the article focuses on claims for veterans' benefits, determinations as to such claims, and the process of appeal and review available through the Board of Veterans Appeals, the United States Court of Appeals for Veterans Claims, and United States Court of Appeals for the Federal District.

Federal Aspects:

This article discusses federal statutes dealing with veterans, to include the organization of the Department of Veterans Affairs and services and benefits veterans are entitled to receive.

Treated Elsewhere:

Aliens: right to veterans' benefits, see [Am. Jur. 2d, Aliens and Citizens § 2185](#); eligibility for naturalization based on military service or lack thereof, see [Am. Jur. 2d, Aliens and Citizens §§ 2376 to 2381](#)

Armed forces, laws relating generally to, see [Am. Jur. 2d, Military and Civil Defense §§ 1 et seq.](#)

Building contracts in which purchaser intends to finance construction by Department of Veterans Affairs-type mortgage loan, requirements that structure comply with Department's regulations, plans, or standards, see [Am. Jur. 2d, Building and Construction Contracts § 37](#)

Civil service, eligibility of veterans for preferences in employment, see [Am. Jur. 2d, Civil Service § 35](#)

Confidentiality of information concerning former Armed Forces personnel and their dependents, see [Am. Jur. 2d, Freedom of Information Acts § 122](#)

Exemption: of veterans' benefits from claims of creditors, generally, see [Am. Jur. 2d, Exemptions §§ 253 to 257](#); of veterans from military service, see [Am. Jur. 2d, Military and Civil Defense § 120](#)

Federal Tort Claims Act, acceptance of veterans' benefits as not precluding claims under, see [Am. Jur. 2d, Federal Tort Claims Act § 20](#)

Garnishment of retirement benefits as prohibited by Veterans Benefit Act, see [Am. Jur. 2d, Executions and Enforcement of Judgments § 573](#)

Government insurance for veterans, generally, see [Am. Jur. 2d, Insurance §§ 1872 to 1908](#)

Housing authority's manner in selecting occupants for housing projects as including consideration of statutory preferences for families of veterans or disabled veterans, see [Am. Jur. 2d, Housing Laws and Urban Redevelopment § 32](#)

Licenses: statutes exempting veterans or ex-soldiers from obtaining, see [Am. Jur. 2d, Licenses and Permits § 55](#); exemptions from license requirements for peddling or soliciting to war veterans or persons who previously served in military, see [Am. Jur. 2d, Peddlers, Solicitors, and Transient Dealers § 70](#)

Military pensions and bonuses, see [Am. Jur. 2d, Pensions and Retirement Funds §§ 1166 to 1180](#)

Public funds or property for the benefit of veterans, state statutes providing for the use of, generally, see [Am. Jur. 2d, Public Funds § 57](#)

Public officers, generally, see [Am. Jur. 2d, Public Officers and Employees §§ 1 et seq.](#)

Social Security: other government benefits to which individual may be entitled as reducing Social Security disability benefits as not including veterans' benefits, see [Am. Jur. 2d, Social Security and Medicare § 1417](#)

Soldiers' and Sailors' Civil Relief Act, generally, see [Am. Jur. 2d, Military and Civil Defense §§ 327 to 370](#)

Unemployment compensation, eligibility of veterans for, see [Am. Jur. 2d, Unemployment Compensation §§ 56 to 58](#)

Veterans Readjustment and Rehabilitation Acts: affirmative action requirements for veterans, generally, see [Am. Jur. 2d, Job Discrimination §§ 583 to 595](#); Vietnam-Era Veterans Readjustment Assistance Act as requiring government contractors and subcontractors to take affirmative action to employ and advance in employment qualified disabled veterans and Vietnam-era veterans and prohibiting discrimination against qualified special disabled veterans, see [Am. Jur. 2d, Job Discrimination §§ 25, 171](#); records required under regulations governing affirmative action obligations of government contractors to workers with disabilities and qualified special disabled veterans under Vietnam-Era Veterans Readjustment Assistance Act, see [Am. Jur. 2d, Job Discrimination §§ 1669, 1671](#)

Workers' compensation, effect of injured worker's receipt of disability pension from Department of Veterans Affairs as affecting eligibility for, see [Am. Jur. 2d, Workers' Compensation § 396](#)

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Research References

West's Key Number Digest

West's Key Number Digest, [Armed Services](#)  [101](#), [101.1](#), [102.1](#)

A.L.R. Library

A.L.R. Index, Veterans and Veterans Administration

West's A.L.R. Digest, [Armed Services](#)  [101](#), [101.1](#), [102.1](#)

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77 Am. Jur. 2d Veterans and Veterans Laws § 1

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I. In General

§ 1. Definitions

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West's Key Number Digest

West's Key Number Digest, [Armed Services](#) , [101](#), [101.1](#), [102.1](#)

The term "veteran" means a person who served in the active military, naval, or air service and who was discharged or released therefrom under conditions other than dishonorable.¹ A "veteran of any war" means any veteran who served in the active military, naval, or air service during a period of war.² The statutes also define "period of war,"³ as well as the periods of various wars and military conflicts.⁴

Pursuant to statute, the term "spouse" means a person of the opposite sex who is a wife or husband,⁵ and except for purposes of the federal statutes pertaining to customs duties,⁶ the term "surviving spouse" means a person of the opposite sex who was the spouse of a veteran at the time of the veteran's death and who lived with the veteran continuously from the date of marriage to the date of the veteran's death (except where there was a separation which was due to the misconduct of, or procured by, the veteran without the fault of the spouse) and who has not remarried or (in cases not involving remarriage) has not since the death of the veteran, and after September 19, 1962, lived with another person and held himself or herself out openly to the public to be the spouse of such other person.⁷ However, these provisions have been held unconstitutional as a violation of equal protection, on the ground that excluding spouses in same-sex marriages from veterans' benefits is not rationally related to a legitimate governmental interest.⁸

The term "service-connected" means, with respect to disability or death, that such disability was incurred or aggravated, or that the death resulted from a disability incurred or aggravated, in the line of duty in the active military, naval, or air service.⁹ "In the line of duty" and "service-connected" mean the same thing.¹⁰ Similarly, "nonservice-connected" means, with respect to disability or death, that such disability was not incurred or aggravated, or that the death did not result from a disability incurred or aggravated, in the line of duty in the active military, naval, or air service.¹¹

The term "compensation" means a monthly payment made by the Secretary to a veteran because of service-connected disability, or to a surviving spouse, child, or parent of a veteran because of the service-connected death of the veteran occurring before January 1, 1957.¹² The term "dependency and indemnity compensation" means a monthly payment made by the Secretary to a surviving spouse, child, or parent because of a service-connected death occurring after December 31, 1956, or pursuant to the election of a surviving spouse, child, or parent in the case of such a death occurring before January 1, 1957.¹³ A "pension" is defined as a monthly or other periodic payment made by the Secretary to a veteran because of service, age, or nonservice-connected disability or to a surviving spouse or child of a veteran because of the nonservice-connected death of the veteran.¹⁴

The term "active military, naval, or air service" includes active duty;¹⁵ any period of active duty for training during which the individual concerned was disabled or died from a disease or injury incurred or aggravated in the line of duty;¹⁶ and any period of inactive duty training during which the individual concerned was disabled or died from an injury incurred or aggravated in the line of duty, or from an acute myocardial infarction, a cardiac arrest, or a cerebrovascular accident occurring during such training.¹⁷

Under Title 38, the terms "Secretary" and "Department" mean the Secretary of Veterans Affairs and the Department of Veterans Affairs, respectively.¹⁸

CUMULATIVE SUPPLEMENT

Statutes:

[38 U.S.C.A. § 101](#), as amended effective January 1, 2021, struck out " or air service" and inserted "air, or space service."

[END OF SUPPLEMENT]

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Footnotes

- 1 [38 U.S.C.A. § 101\(2\)](#).
A National Guardsman, who served a period of active duty for training that lasted at least 90 days but whose service was limited to active duty for training, was not a "veteran" for Department of Veterans Affairs disability compensation purposes and therefore was not entitled to a presumption of service connection for amyotrophic lateral sclerosis. [Bowers v. Shinseki](#), 26 Vet. App. 201 (2013), *aff'd*, 748 F.3d 1351 (Fed. Cir. 2014), *cert. denied*, 135 S. Ct. 339, 190 L. Ed. 2d 132 (2014).
- 2 [38 U.S.C.A. § 101\(12\)](#).
- 3 [38 U.S.C.A. § 101\(11\)](#).
- 4 [38 U.S.C.A. § 101\(7\)](#) ("World War I"); [38 U.S.C.A. § 101\(8\)](#) ("World War II"); [38 U.S.C.A. § 101\(9\)](#) ("Korean conflict"); [38 U.S.C.A. § 101\(29\)](#) ("Vietnam era"); [38 U.S.C.A. § 101\(30\)](#) ("Mexican border period"); [38 U.S.C.A. § 101\(33\)](#) ("Persian Gulf War").
- 5 [38 U.S.C.A. § 101\(31\)](#).
- 6 [19 U.S.C.A. §§ 1 et seq.](#)
- 7 [38 U.S.C.A. § 101\(3\)](#).
At the time of a veteran's death, his widow did not have "apparent entitlement" to receive death pension benefits where, according to the information in the Department of Veterans Affairs file, the widow did not satisfy the basic eligibility requirements since, at the time of the veteran's death, the couple was separated and living apart, and though there was an exception to the general rule precluding eligibility for a separated

spouse where the file indicates that the separation was solely the fault of the veteran, the VA did not have any information indicating that this exception applied. [Westberry v. Principi](#), 255 F.3d 1377 (Fed. Cir. 2001). A widow of a veteran at the time of the veteran's death was not eligible to claim surviving-spouse status because she was living with and holding herself out to be the spouse of another man. [Cacatian v. West](#), 12 Vet. App. 373 (1999).

A veteran's widow who lived with and openly held herself out in public to be the spouse of another man since the death of her veteran husband was not eligible for surviving spouse benefits, notwithstanding that there was a legal impediment to a legally valid marriage between them because the man was married to another woman. [Dela Cruz v. Principi](#), 15 Vet. App. 143 (2001).

[Cooper-Harris v. U.S.](#), 965 F. Supp. 2d 1139 (C.D. Cal. 2013).

38 U.S.C.A. § 101(16).

As to the necessity of "service connection" in order to be eligible to receive benefits, see §§ 29, 30.

[Shedden v. Principi](#), 381 F.3d 1163 (Fed. Cir. 2004).

38 U.S.C.A. § 101(17).

38 U.S.C.A. § 101(13).

38 U.S.C.A. § 101(14).

As to eligibility for dependency and indemnity compensation, see § 34.

38 U.S.C.A. § 101(15).

38 U.S.C.A. § 101(24)(A).

38 U.S.C.A. § 101(24)(B).

"Aggravated in the line of duty" as used in the statute governing claims for disability compensation based on the aggravation of a preexisting disability during active duty for training means that in order for a claimant to establish status as a "veteran" under the statute, the claimant must demonstrate that he or she experienced a permanent increase in disability beyond the natural progress of that disease or injury during his or her period of active duty for training. [Donnellan v. Shinseki](#), 24 Vet. App. 167 (2010), motion for full-court review denied, 2011 WL 477889 (Veterans App. 2011).

38 U.S.C.A. § 101(24)(C).

38 U.S.C.A. § 101(1).

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I. In General

§ 2. Uniforms, decorations, and honors of veterans

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West's Key Number Digest

West's Key Number Digest, [Armed Services](#)  101, 101.1

A retired officer of the Army, Navy, Air Force, or Marine Corps may bear the title and wear the uniform of his or her retired grade.¹ Furthermore, a person who is discharged honorably or under honorable conditions from the Army, Navy, Air Force, or Marine Corps may wear his or her uniform while going from the place of discharge to his or her home, within three months after his or her discharge,² and a person not on active duty who served honorably in time of war in the Army, Navy, Air Force, or Marine Corps may bear the title, and, when authorized by regulations prescribed by the President, wear the uniform, of the highest grade held by him or her during that war.³

Under such regulations as the Secretary of Veterans Affairs may prescribe, any medal or other device that is lost, destroyed, or becomes unfit for use without fault or neglect of the owner may be replaced at cost.⁴

At the request of the President, the Secretary may conduct a program for honoring the memory of deceased veterans, discharged under honorable conditions, and persons who died in the active military, naval, or air service, by preparing and sending to eligible recipients a certificate bearing the signature of the President and expressing the country's grateful recognition of the deceased individual's service in the Armed Forces.⁵ The award of a certificate to one eligible recipient will not preclude authorization of another certificate if a request is received from some other eligible recipient.⁶

CUMULATIVE SUPPLEMENT

Statutes:

[10 U.S.C.A. § 772](#), as amended effective January 1, 2021, refers, additionally, to the Space Force.

[10 U.S.C.A. § 8751](#) was renumbered effective February 1, 2019, as [10 U.S.C.A. § 9281](#).

[14 U.S.C.A. § 501](#) was renumbered as [14 U.S.C.A. § 2745](#), effective December 4, 2018.

[END OF SUPPLEMENT]

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Footnotes

- 1 [10 U.S.C.A. § 772\(c\)](#).
- 2 [10 U.S.C.A. § 772\(d\)](#).
- 3 [10 U.S.C.A. § 772\(e\)](#).
- 4 [10 U.S.C.A. § 8751\(b\)](#).
As to the replacement of decorations awarded by Coast Guard, see [14 U.S.C.A. § 501](#).
- 5 [38 U.S.C.A. § 112\(a\)](#).
"Eligible recipient," means the next of kin, a relative or friend upon request, or an authorized service representative acting on behalf of such relative or friend. [38 U.S.C.A. § 112\(b\)](#).
- 6 [38 U.S.C.A. § 112\(a\)](#).

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West's Key Number Digest, [Armed Services](#) 🔑 101 to 102

West's Key Number Digest, [Criminal Law](#) 🔑 29(8)

West's Key Number Digest, [United States](#) 🔑 295 to 297

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A.L.R. Index, Servicemen's Readjustment Act

A.L.R. Index, Veterans and Veterans Administration

West's A.L.R. Digest, [Armed Services](#) 🔑 101 to 102

West's A.L.R. Digest, Criminal Law 🔑 29(8)

West's A.L.R. Digest, [United States](#) 🔑 295 to 297

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II. Department of Veterans Affairs

A. In General

§ 3. Overview of Department

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West's Key Number Digest

West's Key Number Digest, [Armed Services](#)  101 to 102

The Department of Veterans Affairs is an executive department of the United States.¹ The purpose of the Department is to administer the laws providing benefits and other services to veterans and the dependents and beneficiaries of veterans.² The Department is composed of, inter alia—

- the Office of the Secretary.³
- the Veterans Health Administration.⁴
- the Veterans Benefits Administration.⁵
- the National Cemetery Administration.⁶
- the Board of Veterans Appeals.⁷
- the Veterans Canteen Service.⁸
- the Board of Contract Appeals.⁹

Provision is also specifically made by statute with regard to the availability of appropriations to the Department¹⁰ and limitations of the use thereof for settlement on construction contracts,¹¹ the location of the Central Office of the Department,¹² the establishment of regional and other field offices,¹³ and the colocation of a specified number of regional offices with medical centers of the Department.¹⁴

The Secretary of Veterans Affairs must establish four medical emergency preparedness centers¹⁵ and must also carry out a program to develop and disseminate a series of model education and training programs on the medical responses to the consequences of terrorist activities.¹⁶

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Footnotes

- 1 5 U.S.C.A. § 101; 38 U.S.C.A. § 301(a).
- 2 38 U.S.C.A. § 301(b).
- 3 38 U.S.C.A. § 301(c)(1).
As to the Secretary of Veterans Affairs, see §§ 15 to 22.
- 4 38 U.S.C.A. § 301(c)(2).
As to the Veterans Health Administration, see § 7.
- 5 38 U.S.C.A. § 301(c)(3).
As to the Veterans Benefits Administration, see § 6.
- 6 38 U.S.C.A. § 301(c)(4).
- 7 38 U.S.C.A. § 301(c)(5).
As to the Board of Veterans' Appeals, see § 8.
- 8 38 U.S.C.A. § 301(c)(6).
As to the Veterans Canteen Service, see § 78.
- 9 38 U.S.C.A. § 301(c)(7).
- 10 38 U.S.C.A. § 313(a).
- 11 38 U.S.C.A. § 313(b).
- 12 38 U.S.C.A. § 314.
- 13 38 U.S.C.A. § 315.
- 14 38 U.S.C.A. § 316.
- 15 38 U.S.C.A. § 7325(a).
- 16 38 U.S.C.A. § 7326(a).

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§ 4. Security and law enforcement on property under jurisdiction of Department

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West's Key Number Digest

West's Key Number Digest, [Armed Services](#)  101 to 102

West's Key Number Digest, [Criminal Law](#)  29(8)

West's Key Number Digest, [United States](#)  295 to 297

The Secretary of Veterans Affairs is required to prescribe regulations to provide for the maintenance of law and order and the protection of persons and property on Department of Veterans Affairs property.¹ Such regulations must include rules for conduct on Department property,² and the penalties, within statutorily specified limits, for violations of such rules.³ The rules so prescribed, together with the penalties for violations of such rules, must be posted conspicuously on property to which they apply.⁴

The enforcement and arrest authority of Department police officers is specified by statute.⁵ Provision is also made for the use by the Secretary, with the permission of the head of the agency concerned, of the facilities and services of federal, state, and local law enforcement agencies when it is economical and in the public interest to do so.⁶

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Footnotes

- ¹ [38 U.S.C.A. § 901\(a\)\(1\)](#).
"Department property" means land and buildings that are under the jurisdiction of the Department and are not under control of the Administrator of General Services. [38 U.S.C.A. § 901\(a\)\(2\)](#).
- ² [38 U.S.C.A. § 901\(b\)\(1\)](#).
The Secretary of Veterans Affairs may not prohibit the use of a covered service dog in any facility or on any property of the Department or in any facility or on any property that receives funding from the Secretary. [38 U.S.C.A. § 901\(f\)](#).

Promulgation of a regulation prohibiting demonstrations by visitors on property under the charge and control of the Department of Veterans Affairs (VA) unless first authorized by the head of the facility, which was used to prohibit a county political party chairman's intended voter registration drive at a VA medical center, was within the Secretary's statutory authority; Congress, by means of the National Cemeteries Act, wanted the VA to have the ability to ensure that the activities of visitors to VA property not be disruptive of the VA mission to provide services to veterans. [Preminger v. Secretary of Veterans Affairs](#), 517 F.3d 1299 (Fed. Cir. 2008).

3 [38 U.S.C.A. § 901\(b\)\(2\), \(c\).](#)

The Department of Veterans Affairs (VA) enabling statute did not implicitly repeal a criminal drug possession statute with respect to possession on VA property where the two statutes did not collide in an irreconcilable manner, nor did the VA statute in any way appear intended to be a substitute for the more general criminal statute; rather, the prosecutor had discretion to choose between the penalties applicable under the possession statute and the lesser penalties applicable under the VA enabling statute. [U.S. v. Maes](#), 546 F.3d 1066 (9th Cir. 2008).

4 [38 U.S.C.A. § 901\(d\).](#)

5 [38 U.S.C.A. § 902.](#)

6 [38 U.S.C.A. § 905.](#)

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§ 5. Records

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West's Key Number Digest

West's Key Number Digest, [Armed Services](#)  101 to 102

Forms

Forms relating to public access to Department of Veterans Affairs Records, see Am. Jur. Legal Forms 2d, Veterans and Veterans' Laws [\[Westlaw®\(r\) Search Query\]](#)

Forms relating to disclosure of military records, see Am. Jur. Pleading and Practice Forms, Veterans and Veterans' Laws [\[Westlaw®\(r\) Search Query\]](#)

All files, records, reports, and other papers and documents pertaining to any claim under any of the laws administered by the Secretary of Veterans Affairs and the names and addresses of present or former members of the Armed Forces, and their dependents, in the possession of the Department of Veterans Affairs must be confidential and privileged, and no disclosure thereof may be made except as provided by law.¹

Records and documents created by the Department of Veterans Affairs as part of a medical quality-assurance program, with specified exception, are confidential and privileged and may not be disclosed to any person or entity except as specifically provided by statute.²

Any person desiring a copy of any record or paper in the custody of the Secretary of Veterans Affairs, which may be disclosed, must submit to the Secretary an application in writing for such copy,³ specifying the particular record or paper as to which a copy is desired, whether a certified or uncertified copy is desired,⁴ and the purpose for which the copy is desired to be used.⁵

Practice Tip:

Copies of any public document, record, or paper belonging to, or in the files of, the Department, when authenticated by the seal and certified by the Secretary, or by an officer or employee of the Department to whom authority has been delegated in writing by the Secretary of Veterans Affairs, will constitute evidence equal with the original thereof.⁶

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Footnotes

- 1 [38 U.S.C.A. § 5701\(a\)](#).
A written release signed by a veteran, in connection with his application for employment, that broadly authorized the employer to corroborate and secure information about the veteran's background, without reference to a particular time frame, supplied the requisite written consent under the Privacy Act to authorize disclosure of the veteran's Veteran Administration (VA) claims file by the Department of Veterans Affairs (DVA) to the employer to be used at a union grievance proceeding although the release was signed eight years before the disclosure. [Wiley v. Department of Veterans Affairs](#), 176 F. Supp. 2d 747 (E.D. Mich. 2001).
- 2 [38 U.S.C.A. § 5705\(a\)](#), referring to [38 U.S.C.A. §§ 5705\(b\), 7311\(g\)](#).
- 3 [38 U.S.C.A. § 5702\(a\)](#).
The Secretary must establish a schedule of fees for copies and certification of such records. [38 U.S.C.A. § 5702\(b\)](#).
- 4 [38 U.S.C.A. § 5702\(a\)\(1\)](#).
- 5 [38 U.S.C.A. § 5702\(a\)\(2\)](#).
- 6 [38 U.S.C.A. § 302\(b\)](#).

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II. Department of Veterans Affairs

B. Administrations and Boards Within Department

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§ 6. Veterans Benefits Administration

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West's Key Number Digest

West's Key Number Digest, [Armed Services](#)  101 to 102

There is in the Department of Veterans Affairs a Veterans Benefits Administration, the primary function of which is the administration of nonmedical benefits programs of the Department which provide assistance to veterans and their dependents and survivors.¹ The Administration is headed by the Under Secretary for Benefits, who is directly responsible to the Secretary of Veterans Affairs for the Administration's operations.² The Administration is responsible for the administration within the Department of compensation and pension programs,³ vocational rehabilitation and educational assistance programs,⁴ veterans' housing loan programs,⁵ veterans' and service members' life insurance programs,⁶ and outreach programs and other veterans' services programs.⁷

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Footnotes

- ¹ 38 U.S.C.A. § 7701(a).
- ² 38 U.S.C.A. § 7701(b).
As to the Under Secretary for Benefits, generally, see § 9.
- ³ 38 U.S.C.A. § 7703(1).
- ⁴ 38 U.S.C.A. § 7703(2).
- ⁵ 38 U.S.C.A. § 7703(3).
- ⁶ 38 U.S.C.A. § 7703(4).
- ⁷ 38 U.S.C.A. § 7703(5).

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§ 7. Veterans Health Administration

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West's Key Number Digest

West's Key Number Digest, [Armed Services](#)  101 to 102, 104.2(1)

There is in the Department of Veterans Affairs a Veterans Health Administration, headed by the Under Secretary for Health.¹ The primary function of the Administration is to provide a complete medical and hospital service for the medical care and treatment of veterans, as provided in the statutory provisions pertaining to veterans' benefits and in regulations prescribed by the Secretary of Veterans Affairs pursuant to such statute.²

In order to carry out more effectively the primary function of the Veterans Health Administration and in order to assist in providing an adequate supply of health personnel to the nation, the Secretary, to the extent feasible without interfering with the medical care and treatment of veterans, must develop and carry out a program of education and training of health personnel,³ must carry out a major program for the recruitment, training, and employment of veterans with certain medical military occupation specialties;⁴ and must carry out a program of medical research in connection with the provision of medical care and treatment to veterans.⁵ Provision is made by statute with regard to the Under Secretary for Health's duties to prescribe regulations necessary to the administration of the Veterans Health Administration.⁶

The Veterans Health Administration includes—

— the Office of the Under Secretary for Health.⁷

— a Medical Service.⁸

— a Dental Service.⁹

— a Podiatric Service.¹⁰

— an Optometric Service.¹¹

— a Nursing Service.¹²

— a Readjustment Counseling Service.¹³

— such other professional and auxiliary services as the Secretary may find to be necessary to carry out the functions of the Administration.¹⁴

The Secretary, upon the recommendation of the Under Secretary for Health and pursuant to law, must prescribe regulations establishing procedures to ensure that all medical and prosthetic research carried out and, to the maximum extent practicable, all patient care must be carried out only with the full and informed consent of the patient or subject or, in appropriate cases, a representative thereof;¹⁵ to maintain the confidentiality of records of the identity, diagnosis, prognosis, or treatment of any patient or subject which are maintained in connection with the performance of any program or activity (including education, training, treatment, rehabilitation, or research) relating to drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus, or sickle cell anemia;¹⁶ and to prevent discrimination against veterans who are alcohol or drug abusers or who are infected with the human immunodeficiency virus.¹⁷

The Secretary may authorize the establishment at any Department medical center of a nonprofit corporation to provide a flexible funding mechanism for the conduct of approved research and education at the medical center.¹⁸ The Secretary may also contract with certain institutions and persons to provide scarce medical specialist services at Department facilities as specified by statute.¹⁹

CUMULATIVE SUPPLEMENT

Statutes:

38 C.F.R. §§ 17.613 to 17.618, as added effective December 31, 2019, establishes the Veterans Healing Veterans Medical Access and Scholarship Program (VHVMASP), which provides funding for the medical education of two eligible veterans from each covered medical school. As to eligibility, see 38 C.F.R. § 17.615. As to agreement and obligated service, see 38 C.F.R. § 17.617.

[END OF SUPPLEMENT]

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Footnotes

- 1 38 U.S.C.A. § 7301(a).
As to the Under Secretary for Health, generally, see § 9.
- 2 38 U.S.C.A. § 7301(b).
- 3 38 U.S.C.A. § 7302(a)(1).
- 4 38 U.S.C.A. § 7302(a)(2).
- 5 38 U.S.C.A. § 7303(a)(1).
- 6 38 U.S.C.A. § 7304.
- 7 38 U.S.C.A. § 7305(1).
- 8 38 U.S.C.A. § 7305(2).

9 38 U.S.C.A. § 7305(3).

10 38 U.S.C.A. § 7305(4).

11 38 U.S.C.A. § 7305(5).

12 38 U.S.C.A. § 7305(6).

13 38 U.S.C.A. § 7305(7).

14 38 U.S.C.A. § 7305(8).

15 38 U.S.C.A. § 7331, referring to 38 U.S.C.A. § 7334.

A veteran did not establish lack of informed consent before eye surgery as basis for entitlement to compensation benefits for loss of vision in one eye as an additional disability caused by the fault of the Department of Veterans Affairs, based solely on the failure of the consent documents to list specific disclosed risks, as it could not be presumed that the veteran's complications were not discussed simply because they were not recorded in the consent documents. [Halcomb v. Shinseki](#), 23 Vet. App. 234 (2009).

16 38 U.S.C.A. § 7332.

17 38 U.S.C.A. § 7333.

18 38 U.S.C.A. § 7361(a).

As to the purpose of the corporation, see 38 U.S.C.A. § 7362.

19 38 U.S.C.A. § 7409.

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II. Department of Veterans Affairs

B. Administrations and Boards Within Department

§ 8. Board of Veterans Appeals

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Armed Services](#)  136

There is in the Department of Veterans Affairs a Board of Veterans Appeals.¹ The Board is under the administrative control and supervision of a chairman directly responsible to the Secretary of Veterans Affairs.² The membership and personnel of the Board is also governed by statute,³ including the power of the Secretary to designate one member of the Board as Vice Chairman.⁴

The members of the Board of Veterans Appeals other than the Chairman (and including the Vice Chairman) must be appointed by the Secretary, with the approval of the President, based upon recommendations of the Chairman.⁵ Each member of the Board must be a member in good standing of the bar of a state.⁶ Board members may be noncertified, have their appointments terminated, and be removed from the Board under statutorily specified circumstances.⁷

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Footnotes

¹ 38 U.S.C.A. § 7101(a).

² 38 U.S.C.A. § 7101(a).

As to appointment, term, and removal, see 38 U.S.C.A. § 7101(b).

The Chairman of the Board has specified annual reporting duties with regard to the Board's activities and plans. 38 U.S.C.A. § 7101(c)(2), (d).

³ 38 U.S.C.A. § 7101(a).

⁴ 38 U.S.C.A. § 7101(b)(4).

⁵ 38 U.S.C.A. § 7101A(a)(1).

⁶ 38 U.S.C.A. § 7101A(a)(2).

As to the compensation of such members, see 38 U.S.C.A. § 7101A(b).

7 38 U.S.C.A. § 7101A(c) to (e).

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II. Department of Veterans Affairs

C. Officers and Employees

[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Armed Services](#) 🔑101 to 102, 130

West's Key Number Digest, [Health](#) 🔑265

West's Key Number Digest, [Labor and Employment](#) 🔑1870

West's Key Number Digest, [Public Employment](#) 🔑433, 1085

West's Key Number Digest, [United States](#) 🔑943, 1365, 1366, 1418(2)

A.L.R. Library

A.L.R. Index, Veterans and Veterans' Administration

West's A.L.R. Digest, [Armed Services](#) 🔑101 to 102, 130

West's A.L.R. Digest, [Health](#) 🔑265

West's A.L.R. Digest, [Labor and Employment](#) 🔑1870

West's A.L.R. Digest, [Public Employment](#) 🔑433, 1085

West's A.L.R. Digest, [United States](#) 🔑943, 1365, 1366, 1418(2)

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II. Department of Veterans Affairs

C. Officers and Employees

1. In General

a. Department Officers and Staff

§ 9. Department of Veterans Affairs officers and staff, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Armed Services](#)  101 to 102

The Deputy Secretary of Veterans Affairs, who is also appointed by the President, by and with the advice and consent of the Senate, performs such functions as the Secretary of Veterans Affairs prescribes.¹ Unless the President designates another officer of the government, the Deputy Secretary will be the Acting Secretary of Veterans Affairs during the absence or disability of the Secretary or in the event of a vacancy in the office of Secretary.²

There is in the Department of Veterans Affairs an Under Secretary for Health, who is appointed by the President, by and with the advice and consent of the Senate,³ who heads the Veterans Health Administration and is directly responsible to the Secretary of Veterans Affairs for its operation.⁴ There is also in the Department an Under Secretary for Benefits, who is appointed by the President, by and with the advice and consent of the Senate,⁵ who heads, and is directly responsible to the Secretary for the operations of, the Veterans Benefits Administration.⁶ The Department of Veterans Affairs also includes an Under Secretary for Memorial Affairs who is the head of the National Cemetery Administration;⁷ Assistant Secretaries and Deputy Assistant Secretaries;⁸ a Chief Financial Officer;⁹ a Chief Information Officer;¹⁰ an Office of the General Counsel, to be headed by the General Counsel;¹¹ and an Inspector General.¹²

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Footnotes

¹ 38 U.S.C.A. § 304.

2 38 U.S.C.A. § 304.
3 38 U.S.C.A. § 305(a)(1).
4 38 U.S.C.A. § 305(b).
 As to the Veterans Health Administration, generally, see § 7.
 Provision is made by statute for the manner of filling vacancies in the position. 38 U.S.C.A. § 305(c).
5 38 U.S.C.A. § 306(a).
6 38 U.S.C.A. § 306(b).
 As to the Veterans Benefits Administration, generally, see § 6.
7 38 U.S.C.A. § 307.
8 38 U.S.C.A. § 308.
9 38 U.S.C.A. § 309.
10 38 U.S.C.A. § 310.
11 38 U.S.C.A. § 311.
12 38 U.S.C.A. § 312.

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II. Department of Veterans Affairs

C. Officers and Employees

1. In General

a. Department Officers and Staff

§ 10. Director of Center for Minority Veterans

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Armed Services](#)  101 to 102

Statutory provision is made for a Director of the Center for Minority Veterans, to head the Center¹ for a statutorily specified term.² The Director has a number of statutorily imposed duties,³ including, inter alia, the duty to serve as a principal adviser to the Secretary on the adoption and implementation of policies and programs affecting veterans who are minorities.⁴

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Footnotes

- 1 38 U.S.C.A. § 317(a).
- 2 38 U.S.C.A. § 317(b).
- 3 38 U.S.C.A. § 317(d).
- 4 38 U.S.C.A. § 317(d)(1).

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II. Department of Veterans Affairs

C. Officers and Employees

1. In General

a. Department Officers and Staff

§ 11. Director of Center for Women Veterans

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Armed Services](#)  101 to 102

The Director of the Center for Women Veterans in the Department of Veterans Affairs is to head that Center¹ for a specified term² and is to report directly to the Secretary of Veterans Affairs or the Deputy Secretary concerning the Center's activities.³ The Director has a number of statutorily imposed duties,⁴ including, inter alia, the duty to serve as the principal adviser to the Secretary of Veterans Affairs on the adoption and implementation of policies and programs affecting veterans who are women.⁵

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Footnotes

- ¹ 38 U.S.C.A. § 318(a).
- ² 38 U.S.C.A. § 318(b).
- ³ 38 U.S.C.A. § 318(c).
- ⁴ 38 U.S.C.A. § 318(d).
- ⁵ 38 U.S.C.A. § 318(d)(1).

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II. Department of Veterans Affairs

C. Officers and Employees

1. In General

b. Employees

§ 12. Department of Veterans Affairs employees, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Armed Services](#)  101 to 102

The Secretary of Veterans Affairs may place employees of the Department of Veterans Affairs in such Army, Navy, and Air Force installations as may be considered advisable for the purpose of adjudicating disability claims of, and giving aid and advice to, members of the Armed Forces who are about to be discharged or released from active military, naval, or air service.¹

Certain restrictions are made by statute with regard to the number of Senior Executive Service positions in the Department which may be filled by noncareer appointees in any fiscal year,² and the number of positions in the Department which may be excepted from the competitive service, on a temporary or permanent basis, because of their confidential or policy-determining character.³ Political affiliation or activity may not be taken into account in connection with the appointment of any person to any position in, or the performance of any service for, the Department or in the assignment or advancement of any employee in the Department,⁴ except that such restriction does not apply to: (1) the appointment of any person by the President under the statutes pertaining to veterans' benefits (other than the appointment of the Under Secretary for Health, the Under Secretary for Benefits, and the Inspector General);⁵ (2) the appointment of any person to a Senior Executive Service position as a noncareer appointee;⁶ or (3) a position that is excepted from the competitive service, on a temporary or permanent basis, because of the confidential or policy-determining character of the position.⁷

CUMULATIVE SUPPLEMENT

Statutes:

[38 U.S.C.A. § 701](#), as amended effective January 1, 2021, struck out " or air service" and inserted "air, or space service."

[END OF SUPPLEMENT]

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Footnotes

- | | |
|---|---|
| 1 | 38 U.S.C.A. § 701. |
| 2 | 38 U.S.C.A. § 709(a). |
| 3 | 38 U.S.C.A. § 709(b). |
| 4 | 38 U.S.C.A. § 709(c)(1). |
| 5 | 38 U.S.C.A. § 709(c)(2)(A). |
| 6 | 38 U.S.C.A. § 709(c)(2)(B)(i). |
| 7 | 38 U.S.C.A. § 709(c)(2)(B)(ii). |

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II. Department of Veterans Affairs

C. Officers and Employees

1. In General

b. Employees

§ 13. Personnel of Veterans Health Administration

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Armed Services](#)  101 to 102

West's Key Number Digest, [Health](#)  265

West's Key Number Digest, [Labor and Employment](#)  1870

West's Key Number Digest, [Public Employment](#)  433, 1085

West's Key Number Digest, [United States](#)  943, 1365, 1366, 1418(2)

Provision is made regarding the appointment by the Secretary of Veterans Affairs of various professional medical and scientific personnel;¹ qualifications for appointment to specified positions;² periods of probation;³ review of certain appointments; and, if it is found that such appointees are not fully qualified and satisfactory, separation of such persons from the Medical, Dental, or Nursing Service in which they are employed;⁴ promotions of specified employees;⁵ grades and pay scales for certain positions;⁶ the employment, on a temporary full-time basis, part-time basis, or without-compensation basis, of persons in the specified positions, without regard to civil service or classification laws, rules, or regulations;⁷ the establishment of residencies and internships and appointment of qualified persons to such positions;⁸ the appointment of employees other than those provided for by other applicable provisions;⁹ and the reimbursement of full-time, board-certified physicians or dentists appointed under a specific statute for expenses incurred, up to a specified limit, for continuing professional education.¹⁰

Provision is made for the pay of physicians and dentists¹¹ and for nurses and other health-care personnel.¹²

The Secretary is required to prescribe by regulation the hours and conditions of employment and leaves of absence of employees appointed in specified positions in the Veterans Health Administration.¹³ Provision is also made by statute as to

collective bargaining of employees;¹⁴ hours of employment and various restrictions of full-time employees;¹⁵ the payment of travel expenses of certain employees;¹⁶ exclusions of certain physicians, dentists, nurses, and other health-care professionals employed by the Administration from the application of specified federal statutory provisions pertaining to federal government organization and employees;¹⁷ and retirement rights of employees.¹⁸ Specific provision is also made with regard to disciplinary and grievance procedures regarding Administration personnel.¹⁹

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Footnotes

- 1 [38 U.S.C.A. § 7401.](#)
Appointments of specified health-care professionals may be made only after qualifications have been satisfactorily established in accordance with regulations prescribed by the Secretary, without regard to civil service requirements. [38 U.S.C.A. § 7403\(a\)\(1\).](#)
The Secretary may authorize the Under Secretary for Health to pay advance payments, recruitment or relocation bonuses, and retention allowances to the personnel, or interview expenses to candidates for appointment as such personnel, in the manner and subject to the limitations specified. [38 U.S.C.A. § 7410\(a\).](#)
- 2 [38 U.S.C.A. § 7402.](#)
- 3 [38 U.S.C.A. § 7403\(b\)\(1\).](#)
A Veterans Administration physician, a native of Switzerland, did not satisfy the two-year probationary period for permanent appointment during his 14 years of service as temporary appointee before he became United States citizen. [Durr v. Shinseki](#), 638 F.3d 1342 (11th Cir. 2011).
- 4 [38 U.S.C.A. § 7403\(b\)\(4\).](#)
- 5 [38 U.S.C.A. § 7403\(c\).](#)
- 6 [38 U.S.C.A. § 7404.](#)
- 7 [38 U.S.C.A. § 7405.](#)
An appointed part-time physician at a Department of Veteran Affairs hospital has no property interest in his or her medical privileges protected by due process since such employment, by statute, is at-will. [Tie Qian v. Shinseki](#), 747 F. Supp. 2d 1362 (S.D. Fla. 2010), judgment aff'd, 432 Fed. Appx. 808 (11th Cir. 2011); [Breda v. McDonald](#), 2015 WL 9451036 (D. Mass. 2015).
Civil Service Reform Act preemption applies to claims of "prohibited personnel practices" by employees hired pursuant to the statute authorizing the Secretary of Veterans Affairs to hire part-time physicians without regard to civil service or classification laws, rules, or regulations. [Mangano v. U.S.](#), 529 F.3d 1243 (9th Cir. 2008).
- 8 [38 U.S.C.A. § 7406.](#)
- 9 [38 U.S.C.A. § 7408.](#)
- 10 [38 U.S.C.A. § 7411](#), referring to [38 U.S.C.A. § 7401\(1\).](#)
- 11 [38 U.S.C.A. § 7431.](#)
- 12 [38 U.S.C.A. § 7451.](#)
An employee's salary, as a nurse posted to an international health organization in Belgium by her employer, the National Institutes of Health (NIH), which establishes special pay rates in accordance with the Department of Veterans Affairs' special pay rate-setting authority, was not authorized by NIH's special salary schedule, under authorizing statutes that did not apply the schedule outside of the Washington, D.C., labor market which was employee's former duty station, and thus, the employee was overpaid during her foreign service due to incorrect application of the schedule. [Adde v. U.S.](#), 95 Fed. Cl. 4 (2010).
- 13 [38 U.S.C.A. § 7421.](#)
As to the Veterans Health Administration, see [§ 7.](#)
- 14 [38 U.S.C.A. § 7422.](#)
The Secretary of Veterans Affairs has delegated to the Under Secretary the authority to determine whether a matter concerns professional conduct, peer review, or determination of employee compensation and is thus not subject to the right of Department of Veterans Affairs employees to engage in collective bargaining with

respect to conditions of employment. [American Federation of Government Employees, AFL-CIO, Local 3669 v. Shinseki](#), 648 F. Supp. 2d 87 (D.D.C. 2009).

The Department of Veterans Affairs (VA) reasonably determined that a dispute concerning whether operating room nurses at a VA hospital were entitled to premium pay for any hours worked at night or on weekends concerned the establishment, determination, or adjustment of employee compensation, such that the dispute fell within a collective bargaining exclusion, meaning that an arbitrator lacked authority to issue an award. [American Federation of Government Employees, AFL-CIO, Local 446 v. Nicholson](#), 475 F.3d 341 (D.C. Cir. 2007).

Judicial review of decisions issued by Department of Veterans Affairs (VA) regarding scope of VA healthcare professionals' collective bargaining rights under Department of Veterans Affairs Labor Relations Improvement Act is governed by the two-step framework set forth in *Chevron*. [National Federation of Federal Employees v. McDonald](#), 204 L.R.R.M. (BNA) 3263, 2015 WL 5253935 (D.D.C. 2015).

A Department of Veterans Affairs' (VA) ruling exempting from arbitration a VA physician's Civil Service Reform Act employment discrimination grievance was entitled to respect, but not *Chevron* deference, where the ruling was contained in an opinion letter and did not result from a formal proceeding. [American Federation of Government Employees, AFL-CIO Local 2152 v. Principi](#), 464 F.3d 1049 (9th Cir. 2006).

15 38 U.S.C.A. § 7423.

16 38 U.S.C.A. § 7424.

17 38 U.S.C.A. § 7425, referring to 5 U.S.C.A. §§ 3131 et seq., 3133, 3391 et seq., 3591 et seq., 4311 et seq., 4507, 5381 et seq., 7541 et seq.

18 38 U.S.C.A. § 7426.

19 38 U.S.C.A. §§ 7461 to 7464.

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C. Officers and Employees

1. In General

b. Employees

§ 14. Malpractice and negligence suits arising from conduct of Administration employees

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Armed Services](#)  101 to 102

West's Key Number Digest, [United States](#)  943, 1418(2)

The remedy against the United States provided by the Federal Tort Claims Act or through proceedings for compensation or other benefits from the United States as provided by any other law where the availability of such benefits precludes a remedy under such statutory provisions for damages for personal injury, including death, allegedly arising from malpractice or negligence of a health-care employee of the Veterans Health Administration in furnishing health care or treatment while in the exercise of that employee's duties in or for the Administration, is exclusive of any other civil action or proceeding by reason of the same subject matter against the health-care employee (or employee's estate) whose act or omission gave rise to such claim.¹ Among other things, this immunity provision provides an exclusive remedy for intentional torts arising in the context of Department of Veterans Affairs (VA) health care employees providing medical care or treatment, thus precluding the creation of a remedy under *Bivens*; the operation of the Federal Tort Claim Act's intentional tort exclusion is nullified in the context of tort claims arising out of conduct of Veterans Affairs medical personnel within the scope of the federal statute.²

Provision is made by statute requiring the defense of any civil action or proceeding brought against a medical-care employee of the Administration by the Attorney General and providing procedures which must be followed with regard to such defense by the person against whom the action or proceeding has been brought.³ Upon a certification by the Attorney General that the defendant was acting in the scope of his or her employment in or for the Administration at the time of the incident out of which the suit arose, any such civil action or proceeding commenced in a state court must be removed without bond at any time before trial by the Attorney General to the district court of the United States of the district and division embracing the place in which it is pending, and the proceeding deemed a tort action brought against the United States, as specified by statute.⁴ After

removal, the United States will have available all defenses to which it would have been entitled if the action had originally been commenced against the United States.⁵ Should a federal district court determine on a hearing on a motion to remand held before a trial on the merits that the employee whose act or omission gave rise to the suit was not acting within the scope of such person's office or employment, the case must be remanded to the state court.⁶

A damages claim against a director of a regional office of the Department of Veterans Affairs (VA) in his or her personal capacity is barred by the doctrine of qualified immunity where the facts alleged do not show that the director violated a constitutional right concerning the VA's actions related to the determination of disability benefits.⁷

The Attorney General may compromise or settle any claim asserted in such civil action or proceeding in the manner specified by statute.⁸

The Secretary may, to the extent he or she considers appropriate, hold harmless or provide liability insurance for any person to whom the applicable statutory immunity provisions apply, for damages for personal injury or death, or for property damage, negligently caused by such person while furnishing medical care or treatment—including the conduct of clinical studies or investigations—in the exercise of such person's duties in or for the Administration, if such person is assigned to a foreign country, is detailed to a state or political division thereof, or is acting under any other circumstances which would preclude the remedies of an injured third person against the United States, provided by statute for such damage or injury.⁹

CUMULATIVE SUPPLEMENT

Cases:

Supervisors' allegedly racially offensive conduct, including throwing toy monkey at African-American employee of Department of Veterans Affairs (VA) and saying that management intended to "get the monkeys off the backs of management," referring to employee as "sugar daddy," and commenting that employee was "better person" than before, apparently with reference to older photograph in which employee had afro hairstyle, did not amount to materially adverse action, as would support employee's prima facie case of retaliation, based on his filing of Equal Employment Opportunity Commission (EEOC) complaint; on spectrum of offensive conduct, statements fell at best on less severe end, and alleged harassment was not incessant part of workplace environment. Civil Rights Act of 1964 § 704, 42 U.S.C.A. § 2000e-3(a). [Poullard v. McDonald](#), 829 F.3d 844 (7th Cir. 2016).

[END OF SUPPLEMENT]

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Footnotes

- 1 [38 U.S.C.A. § 7316\(a\)\(1\)](#), referring to [28 U.S.C.A. §§ 1346\(b\), 2672](#).
The term "health-care employee of the Administration" means a physician, dentist, podiatrist, chiropractor, optometrist, nurse, physician assistant, expanded-function dental auxiliary, pharmacist, or paramedical (such as medical and dental technicians, nursing assistants, and therapists), or other supporting personnel. [38 U.S.C.A. § 7316\(a\)\(2\)](#).
- 2 [Ingram v. Faruque](#), 728 F.3d 1239 (10th Cir. 2013) (claims that staff psychiatrists and "supporting personnel" violated a detainee's constitutional rights by holding him in a Department of Veterans Affairs (VA) psychiatric ward for over 24 hours without his consent).
- 3 [38 U.S.C.A. § 7316\(b\)](#).
- 4 [38 U.S.C.A. § 7316\(c\)](#).

- 5 38 U.S.C.A. § 7316(c).
6 38 U.S.C.A. § 7316(c).
7 Frison v. Principi, 2003 WL 22097797 (D.C. Cir. 2003).
8 38 U.S.C.A. § 7316(d).
9 38 U.S.C.A. § 7316(e), referring to 28 U.S.C.A. §§ 1346(b), 2672.

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II. Department of Veterans Affairs

C. Officers and Employees

2. Secretary of Veterans Affairs

§ 15. Secretary of Veterans Affairs, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Armed Services](#)  101 to 102

The Secretary of Veterans Affairs heads the Department of Veterans Affairs and is responsible for the proper execution and administration of all laws administered by the Department and for the control, direction, and management of the Department.¹ The Secretary is appointed by the President, by and with the advice and consent of the Senate.² The Secretary of Veterans Affairs has various authority and duties as set forth by federal statute.³ Specifically, the Secretary has the power to prescribe all rules and regulations which are necessary or appropriate to carry out the laws administered by the Department and which are consistent with those laws.⁴

Observation:

Where Congress has given the Secretary discretion in developing regulations,⁵ the Court of Veterans Appeals will sustain a regulation that is consistent with the language of the statute and is a plausible or reasonable interpretation of the law.⁶

The Secretary also has certain authority with regard to the organization and reorganization of the functions of the Administrations, offices, facilities, or activities in the Department, subject to specified limitations.⁷

The Secretary is to seek to achieve the maximum feasible effectiveness, coordination, and interrelationship of services among all programs and activities affecting veterans and their dependents carried out by and under all other departments, agencies, and instrumentalities of the executive branch and to seek to achieve the maximum feasible coordination of such programs with programs carried out under the statutory provisions pertaining to veterans' benefits.⁸

Practice Tip:

The requirement imposed on the Secretary to achieve the maximum feasible effectiveness, coordination, and interrelationship of services among all programs and activities does not provide any express cause of action, does not create an implied cause of action, and does not create any right that is enforceable through [42 U.S.C.A. § 1983](#).⁹

Similarly, the Secretary is to achieve the effective coordination of the provision, under laws administered by the Department, of benefits and services (and information about such benefits and services) with appropriate programs (and information about such programs) conducted by state and local governmental agencies and by private entities at the state and local level.¹⁰

The Secretary may require the opinion of the Attorney General on any question of law arising in the administration of the Department.¹¹ The Secretary also has certain limited powers to request information from financial institutions.¹²

CUMULATIVE SUPPLEMENT

Statutes:

[38 U.S.C.A. § 101](#) Note, as added effective March 9, 2018, provides that the Secretary of Veterans Affairs must include on the internet website of the Department of Veterans Affairs a warning to veterans relating to dishonest, predatory, or otherwise unlawful practices targeting individuals who are eligible for increased pension under [38 U.S.C.A. §§ 1501 et seq.](#), on the basis of need for regular aid and attendance.

[END OF SUPPLEMENT]

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Footnotes

- 1 [38 U.S.C.A. § 303](#).
- 2 [38 U.S.C.A. § 303](#).
- 3 [38 U.S.C.A. §§ 501 et seq.](#)
- 4 [38 U.S.C.A. § 501\(a\)](#).

5 Sacks v. West, 11 Vet. App. 314 (1998).
6 Livesay v. Principi, 15 Vet. App. 165 (2001); Sacks v. West, 11 Vet. App. 314 (1998).
7 38 U.S.C.A. § 510.
8 38 U.S.C.A. § 523(a), referring to 38 U.S.C.A. §§ 101 et seq.
9 Philippeaux v. North Central Bronx Hosp., 871 F. Supp. 640 (S.D. N.Y. 1994).
10 38 U.S.C.A. § 523(b).
11 38 U.S.C.A. § 505.
12 38 U.S.C.A. § 5319.

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2. Secretary of Veterans Affairs

§ 16. Powers and duties as to benefit applications and payments; equitable relief from mistakes

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Armed Services](#)  101 to 102

The Secretary of Veterans Affairs has the power to promulgate regulations with respect to the nature and extent of proof and evidence and the method of taking and furnishing them in order to establish the right to benefits under laws administered by the Department of Veterans Affairs,¹ the forms of application by claimants,² the methods of making investigations and medical examinations,³ and the manner and form of adjudications and awards.⁴

If the Secretary determines that benefits administered by the Department have not been provided by reason of administrative error on the part of the federal government or any of its employees, the Secretary may provide such relief on account of such error as the Secretary determines equitable, including the payment of moneys to any person whom the Secretary determines is equitably entitled to such moneys.⁵ However, the statute allowing an award of equitable relief by the Secretary of Veterans Affairs when benefits administered by the Department of Veterans Affairs are not provided due to administrative error does not permit an inference that Congress expressly consented to a waiver of sovereign immunity so as to authorize the payment of interest on past-due benefits by the Secretary.⁶

Practice Tip:

An administrative grant of partial equitable relief by the Secretary under statute does not fall within the appellate jurisdiction of the Board of Veterans Appeals since there is neither a statute nor a regulatory provision for review by the Board of such awards.⁷

Further, the Secretary is empowered to provide such relief as the Secretary determines to be equitable where the Secretary determines that a veteran, surviving spouse, child of a veteran, or other person has suffered loss as a consequence of reliance upon a determination by the Department of eligibility or entitlement to benefits, without knowledge that it was erroneously made.⁸ Such relief may include the payment of moneys to any person whom the Secretary determines is equitably entitled to such moneys.⁹

The Secretary must periodically compare Department of Veterans Affairs information regarding persons to or for whom compensation or pension is being paid with information in the records of the Social Security Administration relating to persons who have died for the purposes of determining whether any such persons to whom compensation and pension is being paid are deceased;¹⁰ insuring that such payments to or for any such persons who are deceased are terminated in a timely manner;¹¹ and insuring that collection of overpayments of such benefits resulting from payments after the death of such persons is initiated in a timely manner.¹²

Observation:

The uniform administrative requirements, cost principles, and audit requirements for federal awards¹³ apply to the Department of Veterans Affairs.¹⁴

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Footnotes

- 1 38 U.S.C.A. § 501(a)(1).
A regulatory requirement of "credible supporting evidence" of a claimed in-service stressor is a valid exercise by the Secretary of Veterans Affairs of his statutory authority to promulgate regulations as to the "nature and extent of proof and evidence" necessary to establish a service connection for posttraumatic stress disorder. *Moran v. Principi*, 17 Vet. App. 149 (2003).
- 2 38 U.S.C.A. § 501(a)(2).
- 3 38 U.S.C.A. § 501(a)(3).
- 4 38 U.S.C.A. § 501(a)(4).
- 5 38 U.S.C.A. § 503(a).
- 6 *Smith v. Principi*, 281 F.3d 1384 (Fed. Cir. 2002).
- 7 *Darrow v. Derwinski*, 2 Vet. App. 303 (1992), referring to 38 U.S.C.A. § 503(a).
- 8 38 U.S.C.A. § 503(b).
- 9 38 U.S.C.A. § 503(b).
- 10 38 U.S.C.A. § 5318(a)(1).

11 38 U.S.C.A. § 5318(a)(2).
12 38 U.S.C.A. § 5318(a)(3).
13 2 C.F.R. Pt. 200.
14 2 C.F.R. § 802.101.

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§ 17. Powers and duties regarding disabled veterans

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West's Key Number Digest

West's Key Number Digest, [Armed Services](#)  101 to 102

The Secretary of Veterans Affairs has specified powers as to the assistance of certain organizations in providing recreational activities which would further the rehabilitation of disabled veterans.¹ In addition, the Secretary is empowered to conduct studies and investigations, and prepare reports, relative to the rehabilitation of disabled persons; the relative abilities, aptitudes, and capacities of the several groups of the variously handicapped; and how their potentialities can best be developed and their services best used in gainful and suitable employment.²

The Secretary is required, on a regular basis, to consult with, and seek the advice of, the Advisory Committee on Prosthetics and Special-Disabilities Programs, with regard to the statutorily specified objectives and scope of activities of such committee.³

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- ¹ 38 U.S.C.A. § 521.
- ² 38 U.S.C.A. § 522.
- ³ 38 U.S.C.A. § 543(c).

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§ 18. Compilation, disclosure, and reporting requirements; advisory committees

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West's Key Number Digest

West's Key Number Digest, [Armed Services](#)  101 to 102

The Secretary of Veterans Affairs may compile and publish federal laws relating to veterans' relief¹ and must measure and evaluate the effect of all programs authorized under the statutory provisions pertaining to veterans' benefits.² In addition, the Secretary is responsible for the collection, collation, and analysis of statistical data with regard to specified matters pertaining to such programs.³ Advisory committees are also to be established by the Secretary to be known as the Advisory Committee on Former Prisoners of War,⁴ the Advisory Committee on Women Veterans,⁵ and the Advisory Committee on Minority Veterans with memberships and functions as specified by statute.⁶

The Secretary is required to submit to Congress an annual report containing information as provided by statute,⁷ as well as to provide access to copies of completed evaluative research studies and summaries of evaluations of program impact and effectiveness carried out, and tabulations and analyses of all data collected, to the public and to appropriate congressional committees.⁸

CUMULATIVE SUPPLEMENT

Statutes:

[38 U.S.C.A. § 527](#) Note, as added effective January 5, 2021, provides that the Secretary of Veterans Affairs shall: (1) collect and analyze data on each program of the Department of Veterans Affairs that provides a service or benefit to a veteran, including the program carried out under [10 U.S.C.A. § 1144](#); (2) disaggregate such data by gender, race, and ethnicity, when the data lends

itself to such disaggregation; and (3) publish the data collected and analyzed under [38 U.S.C.A. § 527\(1\)](#) Note, except for such cases in which the Secretary determines that some portions of the data would undermine the anonymity of a veteran.

[END OF SUPPLEMENT]

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Footnotes

- 1 [38 U.S.C.A. § 525.](#)
- 2 [38 U.S.C.A. § 527\(a\).](#)

The Secretary of Veterans Affairs did not abuse his discretion in deciding to abandon a congressionally mandated epidemiological study of effects of exposure to dioxin—a by-product of Agent Orange and other herbicides—on Vietnam veterans, after concluding that a scientifically valid study was impossible; this conclusion was not reached arbitrarily or capriciously since, after extensive efforts to identify and classify data required for an epidemiological study, the Secretary could reasonably have concluded that it was impossible to identify groups of Vietnam veterans who were similar except for their levels of dioxin exposure. [American Legion v. Derwinski](#), 54 F.3d 789 (D.C. Cir. 1995).
- 3 [38 U.S.C.A. § 527\(b\).](#)
- 4 [38 U.S.C.A. § 541.](#)
- 5 [38 U.S.C.A. § 542.](#)
- 6 [38 U.S.C.A. § 544.](#)
- 7 [38 U.S.C.A. § 529.](#)
- 8 [38 U.S.C.A. § 527\(c\).](#)

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§ 19. Assignment or delegation of functions and duties, generally; effect thereof

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West's Key Number Digest

West's Key Number Digest, [Armed Services](#)  101 to 102

Except as otherwise provided by law, the Secretary of Veterans Affairs may assign functions and duties, and delegate, or authorize successive redelegation of, authority to act and to render decisions, with respect to all laws administered by the Department of Veterans Affairs, to such officers and employees as the Secretary may find necessary.¹ Within the limitations of such delegations, redelegations, or assignments, all official acts and decisions of such officers and employees will have the same force and effect as though performed or rendered by the Secretary.² However, the Secretary cannot delegate authority that he or she does not possess.³

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Footnotes

- ¹ [38 U.S.C.A. § 512\(a\)](#).
The Board of Veterans Appeals has the statutory authority to request that the general counsel for the Department of Veterans Affairs issue opinions in individual cases; the statute grants the Board authority to assign functions and duties except as otherwise provided, and no other law prohibits the Board from making such a delegation. [Splane v. West](#), 216 F.3d 1058 (Fed. Cir. 2000).
- ² [38 U.S.C.A. § 512\(a\)](#).
- ³ [Smith v. Gober](#), 14 Vet. App. 227 (2000), *aff'd*, 281 F.3d 1384 (Fed. Cir. 2002).

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§ 20. Settlement and payment of tort claims against United States

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West's Key Number Digest

West's Key Number Digest, [Armed Services](#)  101 to 102

The Secretary of Veterans Affairs has the authority to settle certain tort claims for money damages against the United States cognizable under applicable federal statutes to the extent the authority to do so is delegated to the Secretary by the Attorney General,¹ and may pay tort claims, in the manner authorized by statute, when such claims arise in foreign countries in connection with Department operations abroad, insofar as the claim is presented in writing to the Secretary within two years after it accrues.²

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Footnotes

¹ 38 U.S.C.A. § 515(a), referring to 28 U.S.C.A. §§ 1346(b), 2672; 38 U.S.C.A. § 7316.

² 38 U.S.C.A. § 515(b), referring to 28 U.S.C.A. § 2672.

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§ 21. Contracts and services

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West's Key Number Digest

West's Key Number Digest, [Armed Services](#)  101 to 102

The Secretary of Veterans Affairs may, for purposes of all laws administered by the Department, accept uncompensated services, and enter into contracts or agreements with private or public agencies or persons (including contracts for services of translators without regard to any other law), for such necessary services (including personal services) as the Secretary may consider practicable.¹ The Secretary may also enter into contracts or agreements with private concerns or public agencies for the hiring of passenger motor vehicles or aircraft for official travel whenever, in the Secretary's judgment, such arrangements are in the interest of efficiency or economy.²

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¹ [38 U.S.C.A. § 513.](#)

² [38 U.S.C.A. § 513.](#)

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§ 22. Investigations and hearings; subpoenas, affidavits, oaths, affirmations, and examinations

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West's Key Number Digest

West's Key Number Digest, [Armed Services](#)  130

For the purposes of the laws administered by the Secretary of Veterans Affairs, the Secretary, and those employees to whom the Secretary may delegate such authority, to the extent of the authority so delegated, have the power to issue subpoenas for, and compel the attendance of, witnesses within a radius of 100 miles from the place of hearing.¹ The Secretary may also require the production of books, papers, documents, and other evidence;² take affidavits and administer oaths and affirmations;³ aid claimants in the preparation and presentation of claims;⁴ and make investigations and examine witnesses upon any matter within the jurisdiction of the Department of Veterans Affairs.⁵

Practice Tip:

In case of disobedience to such a subpoena, the aid of any district court of the United States may be invoked in requiring the attendance and testimony of witnesses and the production of documentary evidence, and such court within the jurisdiction of which the inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any officer, agent, or employee of any corporation or to any other person, issue an order requiring such corporation or other person to appear or to give evidence touching the matter in question; any failure to obey such order of the court may be punished by such court as a contempt thereof.⁶

Any oath, affirmation, affidavit, or examination, when certified under the hand of any employee by whom it was administered or taken and authenticated by the seal of the Department of Veterans Affairs, may be offered or used in any court of the United States, and without further proof of the identity or authority of such employee will have like force and effect as if administered or taken before a clerk of such court.⁷

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Footnotes

- 1 [38 U.S.C.A. § 5711\(a\)\(1\).](#)
Any person required by such subpoena to attend as a witness will be allowed and paid the same fees and mileage as are paid witnesses in federal district courts. [38 U.S.C.A. § 5711\(b\).](#)
- 2 [38 U.S.C.A. § 5711\(a\)\(2\).](#)
- 3 [38 U.S.C.A. § 5711\(a\)\(3\).](#)
- 4 [38 U.S.C.A. § 5711\(a\)\(4\).](#)
- 5 [38 U.S.C.A. § 5711\(a\)\(4\).](#)
- 6 [38 U.S.C.A. § 5713.](#)
- 7 [38 U.S.C.A. § 5712.](#)

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II. Department of Veterans Affairs

D. Acquisition, Use, and Disposition of Property, Services, and Facilities

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West's Key Number Digest, [Public Employment](#) 🔑 795

West's Key Number Digest, [United States](#) 🔑 305

A.L.R. Library

A.L.R. Index, Veterans and Veterans Administration

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II. Department of Veterans Affairs

D. Acquisition, Use, and Disposition of Property, Services, and Facilities

§ 23. Acquisition, use, and disposition of property, services, and facilities, generally

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West's Key Number Digest

West's Key Number Digest, [Armed Services](#) 🔑 101 to 102

West's Key Number Digest, [Injunction](#) 🔑 1492

West's Key Number Digest, [Public Employment](#) 🔑 795

West's Key Number Digest, [United States](#) 🔑 305

The Secretary of Veterans Affairs may enter into a multiyear contract for the procurement of supplies or services if the Secretary makes each of a number of statutorily specified determinations.¹ The provision authorizing such multiple-year contracting is not to be construed as restricting the Secretary's exercise of the right to terminate for convenience a contract under any other provision of law which authorizes multiyear contracting.²

For the purposes of certain statutes pertaining to the location of certain Department of Veterans Affairs offices and properties and the acquisition of lands for certain purposes,³ the Secretary of Veterans Affairs may acquire and use real property before title to the property is approved as required by a statute requiring such approval before the purchase of federal lands,⁴ even though the property will be held in an interest other than a fee simple, where the Secretary determines that the interest to be acquired is sufficient for the purposes of the intended use.⁵

Federal statutes provide for a revolving supply fund established for the operation and maintenance of a supply system for the Department (including procurement of supplies, equipment, and personal services and the repair and reclamation of used, spent, or excess personal property)⁶ and give the Secretary the authority to procure and dispose of property and to negotiate for common services;⁷ to procure prosthetic appliances and necessary services required in the fitting, supplying, and training and use of prosthetic appliances;⁸ to procure health-care items;⁹ and to grant easements in government-owned lands under his or her supervision and control to any state or any agency or political subdivision thereof or to any public-service company.¹⁰

Provision is also made for the entry into an agreement by the Secretary for the procurement of certain drugs subject to specified limitations on the prices to be paid for such drugs.¹¹

Federal statutes also specifically authorize agreements between the Secretary and medical schools, health-care facilities, and research centers throughout the country, for the sharing of medical equipment, facilities, and information.¹²

The Secretary may enter into leases with respect to real property that is under the jurisdiction or control of the Secretary,¹³ for the provision of supportive housing, so long as the lease is not inconsistent with and will not adversely affect the mission of the Department of Veterans Affairs.¹⁴

Practice Tip:

The authority of the Secretary to enter into enhanced-use leases expires on December 31, 2023.¹⁵

CUMULATIVE SUPPLEMENT

Statutes:

[38 U.S.C.A. § 8159\(a\)](#), as added effective June 6, 2018, provides that, if, in the course of furnishing hospital care, a medical service, or an extended care service authorized by the Secretary of Veterans Affairs and pursuant to a contract, agreement, or other arrangement with the Secretary, a provider who is not a party to the contract, agreement, or other arrangement furnishes hospital care, a medical service, or an extended care service that the Secretary considers necessary, the Secretary may compensate the provider for the cost of such care.

[END OF SUPPLEMENT]

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Footnotes

- 1 [38 U.S.C.A. § 114\(a\)](#).
As to the requirements as to the provisions of such a multiyear contract, see [38 U.S.C.A. § 114\(b\)](#).
The Secretary is required to prescribe regulations for multiyear contracts. [38 U.S.C.A. § 114\(d\)](#).
- 2 [38 U.S.C.A. § 114\(c\)](#).
- 3 [38 U.S.C.A. §§ 314 to 316, 2406, 8101 et seq.](#)
- 4 [38 U.S.C.A. § 115\(1\)](#), referring to [40 U.S.C.A. § 3111](#).
- 5 [38 U.S.C.A. § 115\(2\)](#).
- 6 [38 U.S.C.A. § 8121](#).
- 7 [38 U.S.C.A. § 8122](#).
- 8 [38 U.S.C.A. § 8123](#).

9 38 U.S.C.A. § 8125.

10 38 U.S.C.A. § 8124.

11 38 U.S.C.A. § 8126(a).

A pharmaceuticals trade association failed to establish that the potential economic harm related to a rebate program implemented by a "Dear Manufacturer" letter and associated materials from the Department of Defense (DOD) pursuant to a federal statute imposing ceiling prices for pharmaceuticals paid for by DOD was so severe as to cause extreme hardship, as required to demonstrate irreparable harm under court's preliminary injunction analysis, even though the association estimated that one of its members would lose profits of between \$446,400 and \$480,000 per month due to rebates under the letter and another would lose profits of between \$16,128 and \$243,200 per month due to such rebates, where the estimates were speculative and, even if accurate, represented less than 1% of the two members' revenues. [Coalition For Common Sense In Government Procurement v. U.S.](#), 576 F. Supp. 2d 162 (D.D.C. 2008).

12 38 U.S.C.A. §§ 8151 to 8154.

As to pilot programs and grants to medical schools, see 38 U.S.C.A. § 8155(b), referring to 38 U.S.C.A. § 8154.

As to coordination with health services development activities carried out under the National Health Planning and Resources Development Act, see 38 U.S.C.A. § 8156, referring to 38 U.S.C.A. §§ 8151 et seq.; 42 U.S.C.A. §§ 300t et seq.

As to joint acquisition of medical equipment with specified institutions and agreements therefor, see 38 U.S.C.A. § 8157.

As to escrow agreements which may be entered into by the Secretary of Veterans Affairs with the institutions involved to facilitate the procurement of medical equipment, see 38 U.S.C.A. § 8158, referring to 38 U.S.C.A. § 8157.

Disabled veterans' procedural injuries under the Administrative Procedure Act, including the opportunity to make their views known at public hearings and the opportunity to have access to publicly available descriptions and justifications of the Department of Veterans Affairs' (VA) proposed and final land deals, were sufficiently connected to their concrete interest in how a VA campus was used, as required to establish Article III standing to bring a claim that the VA improperly executed land-use deals as enhanced sharing agreements, even though enhanced sharing agreements only authorize land-use deals pertaining to the sharing of health-care resources. [Valentini v. Shinseki](#), 860 F. Supp. 2d 1079 (C.D. Cal. 2012).

13 38 U.S.C.A. § 8162(a)(1).

14 38 U.S.C.A. § 8162(a)(2).

As to authority for disposition of lease property, see 38 U.S.C.A. § 8164.

As to use of funds received by the Department under an enhanced-use lease, see 38 U.S.C.A. § 8165.

As to exemption from state and local taxes, see 38 U.S.C.A. § 8167.

As to construction standards applicable to the construction, alteration, repair, remodeling, or improvement of the property that is the subject of an enhanced-use lease, see 38 U.S.C.A. § 8166.

The Department of Veterans Affairs (VA) was not obliged to cooperate with a lessee to help the lessee avoid its responsibilities to develop leased property in compliance with state and local laws, under an enhanced-use lease (EUL) that gave the lessee a right to occupy the property for 65 years in exchange for rent and the lessee's development of the property by constructing an outpatient clinic and multiuse residences in compliance with applicable state and local laws, codes, and ordinances, even though the statute providing construction standards for the EUL afforded the VA discretion to determine whether construction under the lease was required to comply with state and local law since the VA had exercised its discretion to require the lessee's compliance with state and local laws pursuant to the terms of the lease. [Fort Howard Senior Housing Associates, LLC v. United States](#), 121 Fed. Cl. 636 (2015).

15 38 U.S.C.A. § 8169.

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D. Acquisition, Use, and Disposition of Property, Services, and Facilities

§ 24. Medical facilities for veterans entitled to hospital, nursing home, or domiciliary care or medical services

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West's Key Number Digest

West's Key Number Digest, [Armed Services](#)  101 to 102

The Secretary of Veterans Affairs must provide medical facilities for veterans entitled to hospital, nursing home, or domiciliary care or medical services.¹ No medical facility may be constructed or otherwise acquired or altered except in accordance with the statutes pertaining to the acquisition and operation of such facilities.² In carrying out his or her duties, the Secretary must provide for the construction and acquisition of medical facilities in a manner that results in the equitable distribution of such facilities throughout the United States, taking into consideration the comparative urgency of the need for the services to be provided in the case of each particular facility,³ and must give due consideration to excellence of architecture and design.⁴ Furthermore, in considering the need for any project for the construction, alteration, or acquisition (other than by exchange) of a medical facility which is expected to involve a total expenditure of more than a specified dollar amount, the Secretary must consider the sharing of health-care resources with the Department of Defense as an alternative to all or part of such project.⁵

Subject to a statute requiring congressional approval of certain medical facility acquisitions,⁶ the Secretary may construct or alter any medical facility and may acquire, by purchase, lease, condemnation, donation, exchange, or otherwise, such land or interests in land as the Secretary considers necessary for use as the site for such construction or alteration⁷ and may acquire, by purchase, lease, condemnation, donation, exchange, or otherwise, any facility that he or she considers necessary for use as a medical facility.⁸ In the case of any outpatient medical facility for which it is proposed to lease space and for which a qualified lessor and an appropriate leasing arrangement are available, the Secretary must execute a lease for such facility within a specified time after funds are made available for such purpose.⁹ Furthermore, provision is made by federal statute for the use of federally owned facilities as medical facilities¹⁰ and for the acceptance by the President from any state or other political subdivision or from any person, any building, structure, equipment, or grounds suitable for the care of disabled persons.¹¹

Whenever the Secretary considers it to be in the interest of the United States to construct a new medical facility to replace an existing medical facility, the Secretary may demolish the existing facility and use the site on which it is located for the site of the new medical facility¹² or, if in the judgment of the Secretary it is more advantageous to construct such medical facility on a different site in the same locality, may exchange such existing facility and the site of such existing facility for the different site.¹³ Furthermore, whenever the Secretary determines that any site acquired for the construction of a medical facility is not suitable for that purpose, the Secretary may exchange such site for another site to be used for that purpose, or may sell such site.¹⁴ The Secretary may carry out any construction or alteration authorized under the provisions pertaining to acquisition and operation of medical facilities by contract if he or she considers it to be advantageous to the United States to do so.¹⁵ The Secretary may also obtain, by contract or otherwise, the services of individuals who are architects or engineers and of architectural and engineering corporations and firms, to the extent that the Secretary may require such services, for any medical facility authorized to be constructed or altered.¹⁶ Furthermore, the President may require the architectural, engineering, constructing, or other forces of any of the departments of the federal government to do or assist in the construction and alteration of medical facilities, and the President may employ for such purposes individuals and agencies not connected with the federal government, if in his or her opinion such is desirable, at such compensation as he or she may consider reasonable.¹⁷

The Secretary is responsible for all construction authorized under the applicable provisions, including the interpretation of construction contracts, the approval of materials and workmanship supplied pursuant to a construction contract, approval of changes in the construction contract, certification of vouchers for payments due the contractor, and final settlement of the contract.¹⁸ Statutes also specifically make provision with regard to structural requirements of medical facilities,¹⁹ contributions which the Secretary may make to local authorities toward, or for, the construction of traffic controls, road improvements, or other devices adjacent to a medical facility if considered necessary for safe ingress or egress;²⁰ parking facilities for persons using medical facilities;²¹ and the relinquishment to the state in which any lands or interests therein under the supervision or control of the Secretary are situated, such measure of legislative jurisdiction over such lands or interests as is necessary to establish concurrent jurisdiction between the federal government and the state concerned.²²

A statute specifies certain requirements with regard to the operation of medical facilities,²³ including the duty of the Secretary to maintain the bed and treatment capacities of all Department medical facilities, including the staffing required to maintain such capacities, so as to ensure the accessibility and availability of such beds and treatment capacities to eligible veterans in all states; to minimize delays in admissions and in the provision of hospital, nursing home, and domiciliary care, and of medical services furnished; and to ensure that eligible veterans are provided such care and services in an appropriate manner.²⁴ Specific provision is also made by statute with regard to the furnishing of health-care services to members of the Armed Forces during a war or national emergency²⁵ and with regard to the sharing of health-care resources between the Secretary of Veterans Affairs and the Department of Defense.²⁶

CUMULATIVE SUPPLEMENT

Statutes:

38 U.S.C.A. § 8110 Note, as added effective January 5, 2021, provides that the Secretary of Veterans Affairs must prioritize the retrofitting of existing medical facilities of the Department of Veterans Affairs with fixtures, materials, and other outfitting measures to support the provision of care to women veterans at such facilities.

[END OF SUPPLEMENT]

Footnotes

- 1 38 U.S.C.A. § 8102(a).
- 2 38 U.S.C.A. § 8102(b), referring to provisions of 38 U.S.C.A. §§ 8101 et seq.
- 3 38 U.S.C.A. § 8102(c)(1).
- 4 38 U.S.C.A. § 8102(c)(2).
- 5 38 U.S.C.A. § 8102(d).
- 6 38 U.S.C.A. § 8104.
- 7 38 U.S.C.A. § 8103(a)(1).
- 8 38 U.S.C.A. § 8103(a)(2).
- 9 38 U.S.C.A. § 8103(a)(3).
- 10 38 U.S.C.A. § 8114(a).
- 11 38 U.S.C.A. § 8115.
- 12 38 U.S.C.A. § 8103(b)(1).
- 13 38 U.S.C.A. § 8103(b)(2).
- 14 38 U.S.C.A. § 8103(c).
- 15 38 U.S.C.A. § 8106(a).
- 16 38 U.S.C.A. § 8106(b)(1).
- 17 38 U.S.C.A. § 8114(b).
- 18 38 U.S.C.A. § 8106(c).
- 19 38 U.S.C.A. § 8105.
- 20 38 U.S.C.A. § 8108.
- 21 38 U.S.C.A. § 8109.
- 22 38 U.S.C.A. § 8112.
- 23 38 U.S.C.A. § 8110.
- 24 38 U.S.C.A. § 8110(a)(2), referring to 38 U.S.C.A. § 1710(a).
- 25 38 U.S.C.A. § 8111A.
- 26 38 U.S.C.A. § 8111.

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77 Am. Jur. 2d Veterans and Veterans Laws § 25

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Veterans and Veterans' Laws

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II. Department of Veterans Affairs

D. Acquisition, Use, and Disposition of Property, Services, and Facilities

§ 25. Medical facilities for veterans entitled to hospital, nursing home, or domiciliary care or medical services—State home facilities

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Armed Services](#)  124

Federal statutes specifically make provision as to state home facilities for furnishing domiciliary, nursing home, and hospital care.¹ These statutes are intended to assist the several states to construct state home facilities (or to acquire facilities to be used as state home facilities) for furnishing domiciliary or nursing home care to veterans and to expand, remodel, or alter existing buildings for furnishing domiciliary, nursing home, adult day health, or hospital care to veterans in state homes.² The Secretary of Veterans Affairs is required by statute to prescribe by regulation: the number of nursing home and domiciliary beds for which assistance may be furnished;³ general standards of construction, repair, and equipment for facilities constructed or acquired with statutory assistance;⁴ and general standards for the furnishing of care in facilities which are constructed or acquired with statutory assistance received.⁵

Any state desiring to receive assistance for a project for construction of state home facilities (or acquisition of a facility to be used as a state home facility) must submit to the Secretary an application containing such information as specified by statute,⁶ after which the Secretary must determine whether the application meets the requirements of statutes and of the regulations;⁷ must notify the state submitting the application whether the application conforms with those requirements and, if it does not, of the actions necessary to bring the application into conformance with those requirements;⁸ and must determine the priority of the project described in the application.⁹ No application submitted to the Secretary may be disapproved until the Secretary has afforded the applicant notice and an opportunity for a hearing.¹⁰ Provision is also made as to the manner of payment of grants awarded under the statutes.¹¹

Statutes also specifically address the recapture by the United States of a specified percentage of the value of facilities covered by the project which cease to be operated, within a specified period, by a state, a state home, or an agency or instrumentality of a state principally for furnishing domiciliary, nursing home, or hospital care to veterans.¹²

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Footnotes

- 1 [38 U.S.C.A. §§ 8131 to 8138.](#)
Except where otherwise specifically provided, nothing in the statutes pertaining to state home facilities for furnishing domiciliary, nursing home, and hospital care may be construed as conferring on any federal officer or employee the right to exercise any supervision or control over the administration, personnel, maintenance, or operation of any state home for which facilities are constructed or acquired with assistance received under such provisions. [38 U.S.C.A. § 8137.](#)
- 2 [38 U.S.C.A. § 8132.](#)
- 3 [38 U.S.C.A. § 8134\(a\)\(2\).](#)
- 4 [38 U.S.C.A. § 8134\(b\)\(1\).](#)
- 5 [38 U.S.C.A. § 8134\(b\)\(2\).](#)
The Secretary may inspect any state facility constructed or acquired with assistance received under statute at such times as the Secretary deems necessary to insure that such facility meets the standards prescribed under law. [38 U.S.C.A. § 8134\(c\)](#), referring to [38 U.S.C.A. § 8134\(b\)\(2\)](#).
- 6 [38 U.S.C.A. § 8135\(a\).](#)
- 7 [38 U.S.C.A. § 8135\(c\)\(1\)\(A\).](#)
- 8 [38 U.S.C.A. § 8135\(c\)\(1\)\(B\).](#)
- 9 [38 U.S.C.A. § 8135\(c\)\(1\)\(C\).](#)
As to order of priority, see [38 U.S.C.A. § 8135\(c\)\(2\)](#).
- 10 [38 U.S.C.A. § 8135\(d\).](#)
- 11 [38 U.S.C.A. § 8135\(e\).](#)
- 12 [38 U.S.C.A. § 8136\(a\).](#)

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77 Am. Jur. 2d Veterans and Veterans Laws § 26

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II. Department of Veterans Affairs

D. Acquisition, Use, and Disposition of Property, Services, and Facilities

§ 26. Assistance to medical schools and other institutions; improvements of Department facilities for training and education purposes

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Armed Services](#)  101 to 102

Under certain statutes¹ Congress has authorized the Secretary of Veterans Affairs to carry out a program of grants to medical schools which have maintained affiliations with the Department of Veterans Affairs in order to assist such schools to expand and improve their training capacities and to cooperate with public and nonprofit institutions of higher learning, hospitals, and other health manpower institutions affiliated with the Department in carrying out the purposes of such statutes.² Under other statutes,³ the Secretary was authorized to implement a pilot program under which he or she could provide assistance in the establishment of new state medical schools at colleges or universities which were primarily supported by the states in which they were located, if such schools were located in proximity to, and operated in conjunction with, Department of Veterans Affairs medical facilities.⁴ Furthermore, Congress authorized the Secretary, by statute,⁵ to carry out a program of grants to provide assistance in the establishment of cooperative arrangements among universities, colleges, junior colleges, community colleges, schools of allied health professions, state and local systems of education, hospitals, and other nonprofit health manpower institutions affiliated with the Department, designed to coordinate, improve, and expand the training of professional and technical allied health and paramedical personnel and to assist in developing and evaluating new health careers, interdisciplinary approaches, and career advancement opportunities, so as to improve and expand allied and other health manpower utilization.⁶

The Secretary is also authorized to spend certain funds under specific limitations, as he or she deems necessary, for the necessary extension, expansion, alteration, improvement, remodeling, or repair of Department buildings and structures to the extent necessary to make them suitable for use for health manpower education and training, and for special allocations to Department hospitals and other medical facilities for the development or initiation of improved methods of education and training, which may include the development or initiation of plans which reduce the period of required education and training for health personnel but which do not adversely affect the quality of such education and training.⁷

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Footnotes

- | | |
|---|------------------------------|
| 1 | 38 U.S.C.A. §§ 8221 et seq. |
| 2 | 38 U.S.C.A. § 8221. |
| 3 | 38 U.S.C.A. §§ 8211 et seq. |
| 4 | 38 U.S.C.A. § 8211. |
| 5 | 38 U.S.C.A. §§ 8231 to 8233. |
| 6 | 38 U.S.C.A. § 8231. |
| 7 | 38 U.S.C.A. § 8241. |

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II. Department of Veterans Affairs

D. Acquisition, Use, and Disposition of Property, Services, and Facilities

§ 27. Acceptance of devises, bequests, and gifts

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Armed Services](#)  101 to 102

The Secretary of Veterans Affairs may accept devises, bequests, and gifts, made in any manner, with respect to which the testator or donor has indicated the intention that such property is to be for the benefit of groups of persons formerly in the active military, naval, or air service who, by virtue of such service alone, or disability suffered therein or therefrom, are or will be patients or members of any one or more hospitals or homes operated by the United States government, or has indicated the intention that such property is to be for the benefit of any such hospital or home, or is to be paid or delivered to any official, as such, or any agency in administrative control thereof.¹ The Secretary may also accept, for use in carrying out all laws administered by the Secretary, gifts, devises, and bequests which will enhance the Secretary's ability to provide services or benefits.² For the purpose of acquiring title to, and possession of, any property which the Department of Veterans Affairs is so authorized to accept, the Secretary may initiate and appear in any appropriate legal proceedings and take such steps in the proceedings or in connection with them as, in his or her discretion, may be desirable and appropriate to reduce such property to possession.³ All funds received by devise, bequest, gift, or otherwise, must be deposited with the Treasurer of the United States to the credit of the General Post Fund.⁴ Specific provision is made by statute with regard to the Secretary's authority to dispose of any property, other than moneys, received,⁵ and the disposition and use of restricted gifts.⁶

CUMULATIVE SUPPLEMENT

Statutes:

[38 U.S.C.A. § 8301](#), as amended effective January 1, 2021, struck out " or air service" and inserted "air, or space service."

[END OF SUPPLEMENT]

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Footnotes

- 1 [38 U.S.C.A. § 8301.](#)
- 2 [38 U.S.C.A. § 8301.](#)
- 3 [38 U.S.C.A. § 8302](#), also providing that the Secretary may incur such expenses incident to the proceedings as he or she deems necessary or appropriate, which are to be paid as are other administrative expenses of the Department.
- 4 [38 U.S.C.A. § 8302.](#)
- 5 [38 U.S.C.A. § 8304.](#)
- 6 [38 U.S.C.A. § 8303.](#)

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III. Eligibility for Benefits

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Research References

West's Key Number Digest

West's Key Number Digest, [Armed Services](#)  [102.1](#), [103](#), [126](#)

A.L.R. Library

A.L.R. Index, Veterans and Veterans Administration

West's A.L.R. Digest, [Armed Services](#)  [102.1](#), [103](#), [126](#)

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77 Am. Jur. 2d Veterans and Veterans Laws § 28

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III. Eligibility for Benefits

§ 28. Eligibility for benefits, generally; active service and active duty service requirements

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Armed Services](#)  102.1, 103

Forms

Forms relating to veteran claims for benefits: see Am. Jur. Legal Forms 2d, Veterans and Veterans Laws [\[Westlaw®\(r\) Search Query\]](#)

Particular federal statutes specify service which is¹ and is not "active service" for purposes of all laws administered by the Secretary of Veterans Affairs.²

In regard to any person who originally enlists in a regular component of the Armed Forces after September 7, 1980,³ and to any other person who enters on active duty after October 16, 1981, and has not previously completed a continuous period of active duty of at least 24 months or been discharged or released from active duty,⁴ a person who is discharged or released from a period of active duty before completing the shorter of 24 months of continuous active duty or the full period for which such person was called or ordered to active duty is not eligible by reason of such period of active duty for any benefit under the statutes pertaining to veterans' benefits or any other law administered by the Secretary.⁵

With exceptions, service before July 1, 1946, in the organized military forces of the government of the Commonwealth of the Philippines, while such forces were in the service of the Armed Forces of the United States pursuant to the military order of the President dated July 26, 1941, including among such military forces organized guerrilla forces under commanders appointed, designated, or subsequently recognized by the Commander in Chief, Southwest Pacific Area, or other competent authority in the Army of the United States, will not be deemed to have been active military, naval, or air service for the purposes of any

law of the United States conferring rights, privileges, or benefits upon any person by reason of the service of such person or the service of any other person in the Armed Forces.⁶ This provision has been held not to deny constitutional equal-protection guaranties to such members⁷ even where they later became United States citizens.⁸ Similarly, with exceptions, service in the Philippine Scouts under the Armed Forces Voluntary Recruitment Act of 1945, § 14 will not be deemed to have been active military, naval, or air service for the purposes of any of the laws administered by the Secretary.⁹ This provision has also been upheld as constitutional.¹⁰

With exceptions, no dependent or survivor of a person as to whom the law requires the denial of benefits may, by reason of such person's period of active duty, be provided with any benefit under the statutes pertaining to veterans' benefits or any other law administered by the Secretary.¹¹

In regard to any person who originally enlists in a regular component of the Armed Forces after September 7, 1980,¹² and to any other person who enters on active duty after October 16, 1981, and has not previously completed a continuous period of active duty of at least 24 months or been discharged or released from active duty,¹³ a person who is discharged or released from a period of active duty before completing the shorter of 24 months of continuous active duty or the full period for which such person was called or ordered to active duty is not eligible by reason of such period of active duty for any benefit under federal law (other than Title 38 or any other law administered by the Secretary), and no dependent or survivor of such person will be eligible for any such benefit by reason of such period of active duty of such person.¹⁴

Practice Tip:

The head of any federal department or agency must provide such information to the Secretary as the Secretary may request for purposes of determining eligibility for or amount of benefits, or verifying other information with respect thereto; the cost of providing information to the Secretary will be borne by the department or agency providing the information.¹⁵

CUMULATIVE SUPPLEMENT

Statutes:

The Veterans Appeals Improvement and Modernization Act of 2017 (38 U.S.C.A. § 101 Note), as added effective August 23, 2017, establishes reform of rights and processes relating to appeals of claims and benefits decisions under the Secretary of Veterans Affairs.

[END OF SUPPLEMENT]

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Footnotes

1 38 U.S.C.A. § 106.
2 38 U.S.C.A. § 107.
3 38 U.S.C.A. § 5303A(b)(2)(A).
4 38 U.S.C.A. § 5303A(b)(2)(B), referring to 10 U.S.C.A. § 1171 (early discharge).
5 38 U.S.C.A. § 5303A(b)(1), referring to 10 U.S.C.A. § 1171 (early discharge).
6 38 U.S.C.A. § 107(a).
The Board of Veterans Appeals did not err in holding that members of the Philippine Army and guerrilla forces who served before July 1, 1946, were ineligible for nonservice-connected veterans' benefits. [Bravo v. Derwinski](#), 1 Vet. App. 609 (1991).
The Board of Veterans Appeals did not commit either legal or factual error in holding that appellant's act of service in the organized military forces of the government of the Commonwealth of Philippines from July 1943 to December 1946 was not qualifying service for the purpose of establishing eligibility for a nonservice-connected pension. [Solis v. Derwinski](#), 2 Vet. App. 6 (1991).
The Board of Veterans Appeals did not err in denying death pension benefits to appellant since her deceased husband's service in organized guerrilla forces of the government of Commonwealth of Philippines before 1946 was not qualifying service. [Fonseca v. Derwinski](#), 2 Vet. App. 54 (1992).
7 [Quiban v. Veterans Admin.](#), 928 F.2d 1154 (D.C. Cir. 1991) (holding that the statute rendering most Philippine veterans of World War II ineligible for United States veterans' benefits did not violate equal-protection guaranties since, based on the distinct origin and history of the Old Philippine Scouts, Congress could reasonably treat them differently); [Dela Pena v. Derwinski](#), 2 Vet. App. 80 (1992), opinion amended, (Jan. 8, 1992).
8 [Besinga v. U.S.](#), 14 F.3d 1356 (9th Cir. 1994); [Talon v. Brown](#), 999 F.2d 514 (Fed. Cir. 1993).
9 38 U.S.C.A. § 107(b).
10 [Rosalinas v. Brown](#), 5 Vet. App. 1 (1993).
11 38 U.S.C.A. § 5303A(c)(1), referring to 38 U.S.C.A. § 5303A(b), (c)(2).
12 38 U.S.C.A. § 5303A(d)(2)(A).
13 38 U.S.C.A. § 5303A(d)(2)(B), referring to discharge or release under 10 U.S.C.A. § 1171.
14 38 U.S.C.A. § 5303A(d)(1).
15 38 U.S.C.A. § 5106.

77 Am. Jur. 2d Veterans and Veterans Laws § 29

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III. Eligibility for Benefits

§ 29. Effect of time of, or circumstances under which, injury, disability, or death arose; service connection

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Armed Services](#)  102.1, 103

Forms

Forms relating to disability or death benefits for veterans, generally: see Am. Jur. Pleading and Practice Forms, Veterans and Veterans Laws [[Westlaw®\(r\) Search Query](#)]

A claim for veteran's disability benefits has five elements:¹

- (1) veteran status;
- (2) the existence of a disability;
- (3) a service connection of the disability;
- (4) the degree of disability; and
- (5) the effective date of the disability.

The term "service-connected" means, with respect to disability or death, that such disability was incurred or aggravated, or that the death resulted from a disability incurred or aggravated, in the line of duty in the active military, naval, or air service.² A service connection for veterans' disability-compensation purposes will generally be awarded to a veteran who served on active duty during a period of war, or during a post-1946 peacetime period, for any disease or injury that was incurred in, or aggravated

by, a veteran's active service, or for certain diseases that were initially manifested, generally to a degree of 10% or more, within a specified presumption period after separation from service;³ when a disease is first diagnosed after service but not within an applicable presumption period, a service connection may nevertheless be established by evidence demonstrating that the disease was in fact incurred during the veteran's service.⁴

Observation:

In a veteran's application for benefits, to sever service connection for a disability is to conclude that a particular disability previously determined to have been incurred in the line of military duty was incurred otherwise.⁵

Under statute, for disability resulting from personal injury suffered or disease contracted in the line of duty, or for aggravation of a preexisting injury suffered or disease contracted in the line of duty, in the active military, naval, or air service, during a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided by law.⁶ Absent a disease or injury incurred during service, a veteran cannot satisfy the basic disability-compensation statutes.⁷

Reminder:

"In the line of duty" and "service-connected" mean the same thing.⁸

However, the mere fact that a service member has suffered a service-connected disease or injury does not automatically lead to compensation for future disabilities; in order to establish a service connection or service-connected aggravation for a present disability, the veteran must show: (1) the existence of a present disability; (2) in-service incurrence or aggravation of a disease or injury; and (3) a causal relationship between the present disability and the disease or injury incurred or aggravated during service.⁹

A veteran is entitled to benefits for the service-connected aggravation of a condition that existed before the commencement of military service if the military service caused some increase in the disability due to the preexisting condition.¹⁰ In other words, where a service-connected injury causes an increase in disability to a nonservice-connected condition, such an increase is to be treated as if service-connected.¹¹

Practice Tip:

Ratings for disabilities aggravated by service are determined by deducting from the present degree of disability the degree, if ascertainable, of the disability existing at the time of entrance into active service in terms of the rating schedule; service connection for aggravation of a disability includes only the degree by which the disability increased in severity during service.¹²

A service connection for any disability or death granted under the statutes pertaining to compensation for service-connected disability or death which has been in force for 10 or more years may not be severed except upon a showing that the original grant of service connection was based on fraud or if it is clearly shown from military records that the person concerned did not have the requisite service or character of discharge.¹³ Furthermore, a rating of total disability or permanent total disability which has been made for compensation, pension, or insurance purposes under laws administered by the Secretary of Veterans Affairs, and which has been continuously in force for 20 or more years, may not be reduced thereafter, except upon a showing that such rating was based on fraud; nor may a disability which has been continuously rated at or above any evaluation for 20 or more years for compensation purposes under laws administered by the Secretary thereafter be rated at less than such evaluation except upon a showing that such rating was based on fraud.¹⁴

CUMULATIVE SUPPLEMENT

Statutes:

[38 U.S.C.A. § 1110](#), as amended effective January 1, 2021, struck out " or air service" and inserted "air, or space service."

[END OF SUPPLEMENT]

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Footnotes

- 1 [D'Amico v. West](#), 209 F.3d 1322 (Fed. Cir. 2000); [Hibbard v. West](#), 13 Vet. App. 546 (2000).
- 2 [§ 1](#).
- 3 [Harris v. West](#), 11 Vet. App. 456 (1998), *aff'd*, 203 F.3d 1347 (Fed. Cir. 2000); [Velez v. West](#), 11 Vet. App. 148 (1998); [Verdon v. Brown](#), 8 Vet. App. 529 (1996).
- 4 [Harris v. West](#), 11 Vet. App. 456 (1998), *aff'd*, 203 F.3d 1347 (Fed. Cir. 2000).
- 5 [Read v. Shinseki](#), 651 F.3d 1296 (Fed. Cir. 2011).
- 6 [38 U.S.C.A. § 1110](#).
Although a regulation applicable to the determination of a veteran's eligibility for disability benefits which addresses the manner in which service connection can be established for diseases that are shown in service, or within the presumptive period after separation, to be chronic diseases allows the service connection to be established in some situations based on chronicity or continuity, the regulation does not negate the

requirement that the veteran show that he or she contracted a compensable disease or injury in service. [Clegg v. Principi](#), 8 Fed. Appx. 935 (Fed. Cir. 2001).

Interpretation of the statute governing veterans' disability benefits, by the Secretary of Veterans Affairs, to require current symptomatology at the time the claim is filed for a veteran to be entitled to compensation for post-traumatic stress disorder (PTSD) was reasonable, as the statute was ambiguous as to whether current, or only past, symptomatology was required, and the interpretation was consistent with the statutory scheme as a whole. [Gilpin v. West](#), 155 F.3d 1353 (Fed. Cir. 1998).

The regulatory definition by the Secretary of Veterans Affairs of "hearing disability," which limited such disability to hearing losses below 6,000 Hz, was a permissible interpretation of the statute authorizing disability payments to veterans for service-connected disabilities; the Secretary was reasonable in limiting such "disability" to hearing losses in frequencies affecting speech recognition, which would affect a veteran's earning capacity. [Palczewski v. Nicholson](#), 21 Vet. App. 174 (2007).

[Sanchez-Benitez v. Principi](#), 259 F.3d 1356 (Fed. Cir. 2001).

§ 1.

[Shedden v. Principi](#), 381 F.3d 1163 (Fed. Cir. 2004).

Evidence of service connection, see § 171.

[Maxson v. Gober](#), 230 F.3d 1330 (Fed. Cir. 2000).

[Boyer v. West](#), 12 Vet. App. 142 (1999), decision aff'd, 210 F.3d 1351 (Fed. Cir. 2000).

[Hensley v. Brown](#), 5 Vet. App. 155 (1993).

Pursuant to relevant statutes, disability arising from veteran's nonservice-connected hearing loss in one ear could not be considered a part of the rating provided for the disability attributable to the veteran's service-connected hearing loss in the other ear. [Boyer v. West](#), 12 Vet. App. 142 (1999), decision aff'd, 210 F.3d 1351 (Fed. Cir. 2000).

38 U.S.C.A. § 1159.

A change in the determination of the situs of a veteran's disability from one muscle group to another, for purposes of determining the correct diagnostic code, did not sever the service connection of the disability, as would violate the statute protecting service connection of disabilities; the specific situs of disability was identified for the first time, the disability was not tied to a particular muscle group but to the veteran's inability to perform certain acts, and the determination that his wound was incurred in connection with military service was not changed. [Read v. Shinseki](#), 651 F.3d 1296 (Fed. Cir. 2011).

38 U.S.C.A. § 110.

A veteran's rating for posttraumatic brain syndrome with a healed fracture was for compensation purposes and, thus, under 38 U.S.C.A. § 110's plain meaning, was protected. [Salgado v. Brown](#), 4 Vet. App. 316 (1993).

77 Am. Jur. 2d Veterans and Veterans Laws § 30

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III. Eligibility for Benefits

§ 30. Effect of time of, or circumstances under which, injury, disability, or death arose; service connection—Misconduct

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Armed Services](#)  102.1, 103

There is a presumption of a service connection for injuries that occur during active duty unless the evidence establishes that the injury was the result of the person's own misconduct.¹ Under statute, no compensation may be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.² A service connection cannot, as a matter of law, be granted for primary substance abuse.³ However, the statute barring veterans' disability compensation if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs does not preclude compensation for an alcohol- or drug-abuse disability secondary to a service-connected disability or use of an alcohol or drug abuse disability as evidence of the increased severity of a service-connected disability.⁴

An injury or disease incurred during active military, naval, or air service will be deemed to have been incurred "in the line of duty" and not the result of the veteran's own misconduct when the person on whose account benefits are claimed was, at the time the injury was suffered or disease contracted, in active military, naval, or air service, whether on active duty or on authorized leave, unless such injury or disease was a result of the person's own willful misconduct or abuse of alcohol or drugs.⁵ Thus, a veteran need not show that an injury occurred while he or she was performing service-related duties or acting within the course and scope of his or her employment in order to receive disability compensation for an injury sustained in the line of duty.⁶ However, the "line-of-duty" requirement will not be met if it appears that, at the time the injury was suffered or disease contracted, the person on whose account benefits are claimed was avoiding duty by deserting the service or by absenting himself or herself without leave, materially interfering with the performance of military duties;⁷ was confined under sentence of court-martial involving an unremitted dishonorable discharge;⁸ or was confined under sentence of a civil court for a felony, as determined under the laws of the jurisdiction where the person was convicted by such court.⁹ Venereal disease will not be presumed to be due to willful misconduct if the person in service complies with the regulations of the appropriate service department requiring the person to report and receive treatment for such disease.¹⁰

CUMULATIVE SUPPLEMENT

Statutes:

[38 U.S.C.A. § 105\(a\)](#), as amended effective January 1, 2021, struck out " or air service" and inserted "air, or space service."

[END OF SUPPLEMENT]

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Footnotes

- 1 [Thomas v. Nicholson](#), 423 F.3d 1279 (Fed. Cir. 2005).
Evidence of service connection, generally, see [§ 171](#).
- 2 [38 U.S.C.A. §§ 105\(a\)](#), 1110.
Department of Veterans Affairs regulations concerning willful misconduct that would prevent a veteran from recovering veterans disability benefits for injuries resulting from an automobile accident were not unconstitutionally vague even if the regulations did not state every specific act that could constitute willful misconduct or exact criteria that would be used to establish the occurrence of each possible type of willful misconduct. [Yeoman v. West](#), 140 F.3d 1443 (Fed. Cir. 1998).
- 3 [Davis v. Principi](#), 17 Vet. App. 54 (2003).
- 4 [Allen v. Principi](#), 237 F.3d 1368 (Fed. Cir. 2001).
- 5 [38 U.S.C.A. § 105\(a\)](#).
The Board of Veterans Appeals failed to correctly apply the statutory presumption that an injury occurred during active military service was incurred in the line of duty since, although there was evidence that the claimant's deceased husband may not have acted wisely on the night he was killed, the Board did not provide adequate reasons or a basis for its finding that he engaged in conduct that satisfied its definition of willful misconduct. [Smith v. Derwinski](#), 2 Vet. App. 241 (1992).
- 6 [Holton v. Shinseki](#), 557 F.3d 1362 (Fed. Cir. 2009).
- 7 [38 U.S.C.A. § 105\(b\)\(1\)](#).
- 8 [38 U.S.C.A. § 105\(b\)\(2\)](#).
- 9 [38 U.S.C.A. § 105\(b\)\(3\)](#).
- 10 [38 U.S.C.A. § 105\(a\)](#).

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77 Am. Jur. 2d Veterans and Veterans Laws § 31

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III. Eligibility for Benefits

§ 31. Effect of character of discharge

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Armed Services](#)  102.1, 103

Forms

Forms relating to military discharge, generally: see Am. Jur. Pleading and Practice Forms, Veterans and Veterans Laws
[\[Westlaw®\(r\) Search Query\]](#)

All rights of a veteran under the laws administered by the Secretary of Veterans Affairs, based upon the period of service from which discharged or dismissed, are barred where the veteran:

- (1) was discharged or dismissed by reason of the sentence of a general court-martial;¹
- (2) was discharged on the ground that he or she was a conscientious objector who refused to perform military duty or refused to wear the uniform or otherwise to comply with lawful orders of competent military authority, or as a deserter;²
- (3) was discharged on the basis of an absence without authority from active duty for a continuous period of at least 180 days, if such person was discharged under conditions other than honorable, unless such person demonstrates to the satisfaction of the Secretary of Veterans Affairs that there were compelling circumstances to warrant such prolonged unauthorized absence;³
- (4) was discharged as an officer by the acceptance of his or her resignation for the good of the service;⁴ or
- (5) with specified exceptions,⁵ was discharged, during a period of hostilities, as an alien.⁶

The provision barring benefits to veterans who have been discharged under these specified circumstances does not apply to any war-risk insurance, government (converted) or National Service Life Insurance policy.⁷ Furthermore, if it is established to the satisfaction of the Secretary that, at the time of the commission of an offense leading to a person's court-martial, discharge, or resignation, that person was insane, such person will not be precluded from benefits under the laws administered by the Secretary based upon the period of service from which such person was separated.⁸ In addition, benefits under laws administered by the Secretary may be provided, as a result of a change in, or new issuance of, a discharge under the applicable statutory provision, after a review by the board of review concerned, subject to review by the Secretary concerned, in the manner specified by statute.⁹ Also, a person discharged or released from active military, naval, or air service under other than honorable conditions who has been awarded a general or honorable discharge under revised standards for the review of discharges, as implemented by specified provisions, may be entitled to benefits under laws administered by the Secretary upon a determination, under specified standards, by the board of review concerned, subject to review by the Secretary concerned.¹⁰

CUMULATIVE SUPPLEMENT

Statutes:

[38 U.S.C.A. § 5303\(e\)](#), as amended effective January 1, 2021, struck out " or air service" and inserted "air, or space service."

[END OF SUPPLEMENT]

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Footnotes

- 1 [38 U.S.C.A. § 5303\(a\)](#).
A veteran administratively discharged for conduct triable by court-martial—spending 32 of 176 days in service AWOL—was properly denied veterans' benefits. [Winter v. Principi](#), 4 Vet. App. 29 (1993).
A former service member's Presidential pardon for his conviction by general court-martial of going absent without leave (AWOL) for 313 days did not bar the Department of Veterans Affairs (VA) from considering his conduct in denying him VA benefits since the pardon relieved him of legal punishment of the general court-martial conviction but did not eliminate consideration of his being AWOL for 313 days that led to his conviction. [Robertson v. Shinseki](#), 26 Vet. App. 169 (2013), decision aff'd, 759 F.3d 1351 (Fed. Cir. 2014), cert. denied, 135 S. Ct. 1716, 191 L. Ed. 2d 678 (2015).
- 2 [38 U.S.C.A. § 5303\(a\)](#).
- 3 [38 U.S.C.A. § 5303\(a\)](#).
The Board of Veterans Appeals' finding that a claimant was ineligible for disability compensation because his discharge was based on his willful and persistent misconduct had a plausible basis in the record, which reflected a seven-month period during which the claimant was AWOL several times and failed to obey lawful orders, and the claimant failed to offer anything which would indicate that the circumstances were beyond his control or that he was unable to seek assistance for his problems. [Stringham v. Brown](#), 8 Vet. App. 445 (1995).
- 4 [38 U.S.C.A. § 5303\(a\)](#).
The Board of Veterans Appeals did not err in finding that a veteran was discharged under dishonorable conditions, thus making his surviving spouse ineligible for dependency and indemnity compensation benefits, where the veteran had requested a discharge for the good of the service in lieu of a court-martial on a charge of wrongful possession of heroin. [Rogers v. Derwinski](#), 2 Vet. App. 419 (1992), opinion amended, (May 22, 1992).
- 5 [38 U.S.C.A. § 5303\(c\)](#).
- 6 [38 U.S.C.A. § 5303\(a\)](#).

7 38 U.S.C.A. § 5303(d).

8 38 U.S.C.A. § 5303(b).

In determining whether a claimant who was dishonorably discharged was entitled to veterans benefits under the insanity exception to the statute barring claimants discharged from a sentence of a general court-martial from receiving veterans benefits, the Board of Veterans Appeals was required to consider the claimant's mental state at the time he committed the offenses for which he was court-martialed and received his dishonorable discharge, and could not rely on neuropsychiatric screenings conducted after the offenses were committed to determine that the claimant was not insane. [Gardner v. Shinseki](#), 22 Vet. App. 415 (2009).

A widow of a dishonorably discharged veteran failed to present any new evidence of the veteran's insanity during the commission of an offense for which he was court-martialed where evidence of the treatment of the veteran for headaches and dizziness was not probative of his sanity. [Helige v. Principi](#), 4 Vet. App. 32 (1993).

9 38 U.S.C.A. § 5303(e)(1), referring to 10 U.S.C.A. § 1553.

10 38 U.S.C.A. § 5303(e)(2).

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77 Am. Jur. 2d Veterans and Veterans Laws § 32

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§ 32. Forfeiture or limitation of benefits based on veteran's misconduct or conviction

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West's Key Number Digest

West's Key Number Digest, [Armed Services](#)  [102.1](#), [103](#), [126](#)

A.L.R. Library

[Deprivation of Due Process in Connection with Veteran's Right to Disability, Medical, or Mental Health Benefits, Treatment, or Services](#), 83 A.L.R. Fed. 2d 133

Treatises and Practice Aids

Forfeiture of Veteran's Benefits. Federal Procedure, L. Ed., Veterans and Veterans Affairs [[Westlaw®\(r\): Search Query](#)]

A person who knowingly makes or causes to be made, or conspires, combines, aids, assists in, agrees to, or arranges for, or in any way procures the making or presentation of a false or fraudulent affidavit, statement, or paper concerning any claim for benefits under any of the laws administered by the Secretary of Veterans Affairs forfeits all rights, claims, and benefits under all laws administered by the Secretary except for insurance benefits.¹

Whenever a veteran entitled to disability compensation has forfeited his or her right to such compensation, the compensation payable, but for the forfeiture, must thereafter be paid to the veteran's spouse, children, and parents.² Furthermore, the forfeiture

of benefits by a veteran does not prohibit payment of the burial allowance, death compensation, dependency and indemnity compensation, or death pension in the event of the veteran's death.³

No forfeiture of benefits may be imposed under the foregoing provisions upon any individual who was a resident of, or domiciled in, a state at the time the act or acts occurred on account of which benefits would, but not for this statute, be forfeited unless such individual ceases to be a resident of, or domiciled in, a state before the expiration of the period during which criminal prosecution could be instituted.⁴

Practice Tip:

A Department of Veterans Affairs benefits recipient or claimant who has been the subject of a final decision declaring forfeiture of eligibility for VA benefits may have that final decision reopened upon the presentment of new and material evidence or revised based on a finding of clear and unmistakable error in the original forfeiture decision.⁵

Any person shown by evidence satisfactory to the Secretary to be guilty of mutiny, treason, sabotage, or rendering assistance to an enemy of the United States or of its allies must forfeit all accrued or future gratuitous benefits under laws administered by the Secretary.⁶ The Secretary, in his or her discretion, may apportion and pay any part of the benefits thus forfeited to dependents of the person forfeiting such benefits.⁷ No forfeiture of benefits may be imposed under the foregoing provisions upon any individual who was a resident of, or domiciled in, a state at the time the act or acts occurred on account of which benefits would, but not for this statute, be forfeited unless such individual ceases to be a resident of, or domiciled in, a state before the expiration of the period during which criminal prosecution could be instituted.⁸

Any individual who is convicted after September 1, 1959, of certain offenses, from and after the date of commission of such offense, has no right to gratuitous benefits (including the right to burial in a national cemetery) under laws administered by the Secretary based on periods of military, naval, or air service commencing before the date of the commission of such offense, and no other person will be entitled to such benefits on account of such individual.⁹ After receipt of notice of the return of an indictment for such an offense, the Secretary must suspend payment of such gratuitous benefits pending disposition of the criminal proceedings.¹⁰ If any individual whose right to benefits has been terminated is granted a pardon of the offense by the President of the United States, the right to such benefits must be restored as of the date of such pardon.¹¹

No pension under public or private laws administered by the Secretary may be paid to or for an individual who has been imprisoned in a federal, state, local, or other penal institution or correctional facility as a result of conviction of a felony or misdemeanor for any part of the period beginning 61 days after such individual's imprisonment begins and ending when such individual's imprisonment ends.¹²

CUMULATIVE SUPPLEMENT

Statutes:

38 U.S.C.A. § 6105(a), as amended effective January 1, 2021, struck out " or air service" and inserted "air, or space service."

[END OF SUPPLEMENT]

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Footnotes

- 1 [38 U.S.C.A. § 6103\(a\)](#).
A letter notifying a veteran of a Regional Office's proposal to initiate a forfeiture action under the statute governing forfeiture of benefits for fraud adequately notified the veteran of both his right to submit evidence and his right to a hearing, and the consequences of failing to do so, as required by procedural due process. Moreover, the veteran affirmatively waived his right to a hearing where he chose to provide a written response to the proposed charge in lieu of appearing and never requested a personal hearing at any time before or after his written submission to the Department of Veterans Affairs. [Del Rosario v. Peake](#), 22 Vet. App. 399 (2009), *aff'd*, 367 Fed. Appx. 157 (Fed. Cir. 2010).
A decision of the Board of Veterans Appeals determining that a widow had forfeited her rights to dependency and indemnity compensation benefits by committing fraud was not clearly erroneous; there was substantial evidence in the record, including statements made by the widow and her children, for the Board to conclude that the widow had knowingly and intentionally submitted false and fraudulent statements regarding her relationship with another man after the veteran's death. [Flores v. Nicholson](#), 19 Vet. App. 516 (2005), *aff'd*, 476 F.3d 1379 (Fed. Cir. 2007).
- 2 [38 U.S.C.A. § 6103\(b\)](#).
- 3 [38 U.S.C.A. § 6103\(c\)](#).
- 4 [38 U.S.C.A. § 6103\(d\)\(1\)](#).
- 5 [Trilles v. West](#), 13 Vet. App. 314 (2000).
- 6 [38 U.S.C.A. § 6104\(a\)](#).
- 7 [38 U.S.C.A. § 6104\(b\)](#).
- 8 [38 U.S.C.A. § 6103\(d\)\(1\)](#), referring to [38 U.S.C.A. § 6104](#).
- 9 [38 U.S.C.A. § 6105\(a\)](#), referring to [38 U.S.C.A. § 6105\(b\)](#).
- 10 [38 U.S.C.A. § 6105\(a\)](#).
- 11 [38 U.S.C.A. § 6105\(a\)](#).
- 12 [38 U.S.C.A. § 1505\(a\)](#).

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77 Am. Jur. 2d Veterans and Veterans Laws § 33

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III. Eligibility for Benefits

§ 33. Members of allied forces

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West's Key Number Digest

West's Key Number Digest, [Armed Services](#)  [102.1](#), [103](#)

Persons who served in the active service in the armed forces of any government allied with the United States in World War II and who, at time of entrance into such active service, were citizens of the United States will, by virtue of such service, and if otherwise qualified, be entitled to specified benefits in the same manner and to the same extent as veterans of World War II are entitled.¹ However, no such benefit may be extended to any person who is not a resident of the United States at the time of filing claim, or to any person who has applied for and received the same or any similar benefit from the government in whose armed forces he or she served.²

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Footnotes

- [1](#) [38 U.S.C.A. § 109\(b\).](#)
[2](#) [38 U.S.C.A. § 109\(b\).](#)

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III. Eligibility for Benefits

§ 34. Surviving spouse, children, and parents

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Armed Services](#)  102.1, 103

When any veteran dies from a service-connected or compensable disability, the Secretary of Veterans Affairs must pay dependency and indemnity compensation to such veteran's surviving spouse, children, and parents¹ in accordance with the governing statutes.²

To be considered a claimant to receive benefits under the provisions for dependency and indemnity compensation for service-connected deaths,³ a veteran's child must, among other things, be a person who is unmarried and who is under the age of 18 years; who, before attaining the age of 18 years, became permanently incapable of self-support; or who, after attaining the age of 18 years and until completion of education or training (but not after attaining the age of 23 years), is pursuing a course of instruction at an approved educational institution.⁴ In addition, the child must be either a legitimate child, a legally adopted child, a stepchild who is a member of a veteran's household or was a member at the time of the veteran's death, or an illegitimate child but, as to the alleged father, only if acknowledged in writing signed by him, or if he has been judicially ordered to contribute to the child's support or has been, before his death, judicially decreed to be the father of such child, or if he is otherwise shown by evidence satisfactory to the Secretary to be the father of such child.⁵

No compensation will be paid to the surviving spouse of a veteran unless the surviving spouse was married to the veteran before the expiration of 15 years after the termination of the period of service in which the injury or disease causing the death of the veteran was incurred or aggravated;⁶ or for one year or more;⁷ or for any period of time if a child was born of the marriage, or was born to them before the marriage.⁸

Whenever, in the consideration of any claim filed by a person as the widow or widower of a veteran for gratuitous death benefits under laws administered by the Secretary, it is established by evidence satisfactory to the Secretary that such person, without knowledge of any legal impediment, entered into a marriage with such veteran which, but for a legal impediment, would have been valid, and thereafter cohabited with the veteran for one year or more immediately before the veteran's death, or for any

period of time if a child was born of the purported marriage or was born to them before such marriage, the purported marriage will be deemed to be a valid marriage but only if no claim has been filed by a legal widow or widower of such veteran who is found to be entitled to such benefits.⁹ However, a decision of Board of Veterans Appeals (BVA) finding that a claimant was not entitled to dependency and indemnity compensation benefits because she could not be recognized as a veteran's widow was not arbitrary or capricious; at the time the claimant participated in a marriage ceremony with the veteran, she was already married, and the subsequent annulment of her first marriage on the basis of fraud after the death of the veteran did not mean that the first marriage was invalid at the time of the second marriage.¹⁰

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Footnotes

- 1 [38 U.S.C.A. § 1310\(a\)](#).
A veteran's surviving spouse is eligible for dependency and indemnity compensation (DIC) where a veteran suffers an injury as the result of Department of Veterans Affairs treatment and that injury results in the veteran's death as long as the death was not the result of willful misconduct by the veteran. [Gantt v. Principi](#), 16 Vet. App. 89 (2002).
A decision of the Board of Veterans Appeals determining that a widow had forfeited her rights to dependency and indemnity compensation benefits by committing fraud was not clearly erroneous; there was substantial evidence in the record, including statements made by the widow and her children, for the Board to conclude that the widow had knowingly and intentionally submitted false and fraudulent statements regarding her relationship with another man after the veteran's death. [Flores v. Nicholson](#), 19 Vet. App. 516 (2005), aff'd, 476 F.3d 1379 (Fed. Cir. 2007).
As to the definitions of dependency and indemnity compensation and surviving spouse, see § 1.
Forfeiture or limitation of benefits based on veteran's misconduct or conviction, generally, see § 32.
- 2 [38 U.S.C.A. §§ 1310 to 1318](#).
[38 U.S.C.A. § 1311\(a\)\(2\)](#), providing for an increase in dependency and indemnity compensation (DIC) when the deceased veteran was in receipt or was entitled to receive compensation for a service-connected disability rated totally disabling for period of at least eight years immediately preceding death does not afford a basis for an initial grant of DIC benefits but only identifies an additional benefit for those who have already qualified for DIC benefits under other statutes. [Barela v. Peake](#), 22 Vet. App. 155 (2008), decision aff'd, 584 F.3d 1379 (Fed. Cir. 2009).
- 3 [Erro v. Brown](#), 8 Vet. App. 500 (1996).
- 4 [38 U.S.C.A. § 101\(4\)\(A\)](#).
An adult son of a deceased veteran was not eligible to receive accrued benefits or dependency and indemnity compensation (DIC) as he was not a "child" within the meaning of the relevant statute. [Burris v. Principi](#), 15 Vet. App. 348 (2001).
A claim for dependency and indemnity compensation benefits as a deceased veteran's child who was permanently incapable of self-support before reaching the age of 18 years was not well grounded absent competent medical evidence of record supporting the assertion that the child was incapable of self-support before the date of his 18th birthday. [Cumby v. West](#), 12 Vet. App. 363 (1999).
Precedent opinion of the Department of Veterans Affairs General Counsel that a home school is not an "educational institution" for purposes of entitlement to dependent pension benefits was not a reasonable statutory interpretation where there was no explanation in the General Counsel's opinion for rejecting other dictionary definitions that favored including home schooling within the definition of "educational institution." [Theiss v. Principi](#), 18 Vet. App. 204 (2004), as amended, (Aug. 26, 2004).
- 5 [38 U.S.C.A. § 101\(4\)\(A\)](#).
The Department of Veterans Affairs may consider the results of a DNA test when determining whether a child is an "illegitimate child" of a veteran for purposes of regulation ([38 C.F.R. § 3.210\(b\)](#)) implementing the statutory definition of "illegitimate child" of a veteran who is entitled to dependency and indemnity compensation. [McDowell v. Shinseki](#), 23 Vet. App. 207 (2009), aff'd, 396 Fed. Appx. 691 (Fed. Cir. 2010).
- 6 [38 U.S.C.A. § 1102\(a\)\(1\)](#).

7 [38 U.S.C.A. § 1102\(a\)\(2\).](#)

8 [38 U.S.C.A. § 1102\(a\)\(3\).](#)

These conditions do not apply to any surviving spouse who, with respect to date of marriage, could have qualified as a surviving spouse for death compensation under any law administered by the Secretary in effect on December 31, 1957. [38 U.S.C.A. § 1102\(b\)](#), referring to [38 U.S.C.A. § 1102\(a\)](#).

9 [38 U.S.C.A. § 103\(a\).](#)

10 [Hopkins v. Nicholson](#), 19 Vet. App. 165 (2005).

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77 Am. Jur. 2d Veterans and Veterans Laws § 35

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III. Eligibility for Benefits

§ 35. Injury or disease caused by tobacco; certain children of women Vietnam veterans

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Armed Services](#)  [102.1](#), [103](#)

Notwithstanding any other provision of law, a veteran's disability or death will not be considered to have resulted from personal injury suffered or disease contracted in the line of duty in the active military, naval, or air service on the basis that it resulted from injury or disease attributable to the use of tobacco products by the veteran during the veteran's service.¹ However, the statute prohibiting a service connection for a veteran's death attributable to the use of tobacco products during the veteran's military service does not apply to veterans themselves who have established a service connection for their disabilities prior to the statute's enactment date even if the disability was attributable to tobacco use during the veterans' military service.²

Provision is also made for benefits for children of women Vietnam veterans born with certain birth defects.³

CUMULATIVE SUPPLEMENT

Statutes:

[38 U.S.C.A. § 1103](#), as amended effective January 1, 2021, struck out " or air service" and inserted "air, or space service."

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Footnotes

¹ [38 U.S.C.A. § 1103\(a\)](#).

- 2 [Stoll v. Nicholson, 401 F.3d 1375 \(Fed. Cir. 2005\)](#) (disapproved of on other grounds by, [Sheets v. Nicholson](#),
20 Vet. App. 463 (2006)).
- 3 38 U.S.C.A. §§ 1811 to 1816.

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